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The "Mukhtaṣar" of al-Khiraqi: A tenth century work on Islamic jurisprudence

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The Mukhtaṣar of Al-Khiraqi: A Tenth Century Work On Islamic Jurisprudence

by

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PREFACE

The purpose of this dissertation is to contribute to the understanding of the Hanbali School (madhhab) during the tenth century C.E. The central element of the thesis is an annotated translation of Al-Khiraqi's Mukhtasar fi 'l-Fiqh. Background: The Qur'an and the Sunnah, in an early period of Islam, were the two primary sources of the law. However, in the period following the death of the Prophet, a wide latitude existed for the development of law from personal opinion, local custom and the administrative regulations of the Caliphs.

From Abu Hanifah (d.767 C.E.) at Kufah, and Malik (d.795 C.E.) at Madina, both of whom developed a criticism of Muslim law as it prevailed during their times, through al-Shafi'i (d. 820 C.E.) there was an increasing tendency to develop the law more adequately. In the process, al-Shafi'i established a comprehensive legal theory based upon the criticism of the aforementioned scholars. Al-Shafi'i's system of legal reasoning, with variations, became generally accepted as leading to authoritative statements of law; and as a result, a systematic science of law, ethics and cult was recognized, the jurisprudence (fiqh), through which one could determine the Shari'ah law in detail. Thus, al-Shafi'i may be considered the founder of Islamic jurisprudence. Nevertheless, Ibn Hanbal (d.855 C.E.), the founder of the

Hanbali school of law, strongly advocated the priority of hadith over al-Shafi'i's more abstract form of legal argument. He therefore compiled an important collection of hadith (Musnad Imam Ahmad) with which his followers supplemented the Qur'an as the basic source of legal authority.

'Umar bin al-Husayn Abu 'l-Qasim al-Khiraqi al-Baghdadi (d.334 A.H./945 C.E.) was one of the first and most celebrated of Hanbali jurisconsultants. He was first guided into the madhhab of the Imam Ahmad by his father Abu Ali al-Khiraqi (d. 299 A.H./912 C.E.).

Al-Khiraqi's only work which had been preserved to this day is his famous Mukhtasar, better known under the name Mukhtasar al-Khiraqi. It is a concise but comprehensive work of jurisprudence, and the first precis of Hanbali fiqh. Ibn Qudamah (d.620 A.H./1223 C.E.) confirmed its importance when he largely depended on it for his encyclopedic work al-Mughni, which is one of the best-known works of the Hanbali school of law.

The manuscript of the Mukhtasar was published in three editions. The first two editions were published in Damascus (1378 A.H.; 1384 A.H./1964 C.E., respectively), consisting of 257 pages and including preface and a table of contents. The third edition, published in Beirut (1403 A.H.) consists of 160 pages including a preface and a table of contents. However, none of these published editions has been translated or subjected to critical analysis. Moreover, despite the fact

that Ibn Qudamah based his work on al-Khiraqi's Mukhtasar, the former gave only a few biographical details about al-Khiraqi, amounting to half a page, and this unfortunately conveys little knowledge about one of the most important figures in the history of the Hanbali school.

I have therefore, presented an annotated translation of the entire text, drawing on the commentary works of Abu Ya'la al-Farra' (d.458 A.H./1066 C.E.), Ibn Qudamah (d.620 A.H./1223 C.E.). The commentary of Abu Ya'la has not been published.

In addition, I have provided a detailed account of the author and his cultural milieu, surveyed what is known of the commentaries on the Mukhtasar, and identified the individual commentators, memorizers, earwitnesses and reporters of the Mukhtasar as completely as possible. Moreover, I have compared the contents of the Mukhtasar with the views of another Hanbali scholar of the succeeding generation, 'Abd al-Aziz Abu Bakr Ghulam al-Khallal (d.363/973-4).

The Mukhtasar is a comprehensive treatise covering the whole range of legal rules. However, the legal rules, no matter how complete they might be, need an appropriate body of legal definitions in order to be applied correctly. I have therefore used this translation as a basis for answering the following question: What are the legal definitions of the subject matters discussed by al-Khiraqi in accordance with Hanbali school of law?

This treatise is an ideal tool for this purpose since it

offers an overview of the Hanbali jurisprudence at least to the tenth century, and has retained its importance as a source of Hanbali law even to the present day.

I have also tried as much as possible to avoid in the translation the use of gender, except where it is inevitable or the meaning is unclear without expressing it, in an attempt to convey that the legal cases here do not pertain to a particular gender. However in some cases which relate specifically to each gender, I have used the exact gender for each individual.

It is worth noting that manuscripts of works used in this study have been cited, giving page numbers related to specific cases, as well as manuscript reference numbers with the latter nos. enclosed in brackets, according to the Catalog entries under which they are listed in the Zahiriyyah Manuscripts Collections. For the various <u>hadith</u>s mentioned or references made to the <u>hadith</u>-reports in the text of the <u>Mukhtasar</u>, I have used Wensinck <u>Hadith</u> Concordance to identify fully their sources.

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1. Al-Khiraqi: Life and Works

1.1 Al-Khiraqi: His Life

He is Abu'l Qasim 'Umar bin 'Ali al-Husayn bin 'Abd-Allah bin Ahmad al-Khiraqi, a prominent Hanbali jurist-scholar from Baghdad. He was first guided into the Hanbali school by his father and he knew the two sons of Ibn Hanbal namely: Salih (d.266/880) and 'Abd-Allah (d.290/903).[1]

It is not known exactly when he was born, but the fact that Ibn Hanbal's son Salih who died in 266/880 was known to him, indicates that al-Khiraqi was certainly born in the 9th century and had lived for at least sixty-six years.

His father, Abu Ali al-Husayn bin 'Abd-Allah al-Khiraqi (d.299/912) another prominent Hanbali jurist-scholar related hadiths from several people including Abu 'Umar al-Duri al-Muqri', 'Amr bin 'Ali al-Basri, al-Mundhir bin al-Walid al-Jarudi al-Kufi, and Muhammad bin Mardas al-Ansari. Many people also related from him, such as Abu Bakr al-Shaf'i, Abu 'Ali bin al-Sawwaf, 'Abd al-'Aziz bin Ja'far al-Hanbali, Abu Muzahim Musa bin Ubayd-Allah bin Khaqan, Abu Bakr 'Abd al-Aziz bin Ja'far bin Ahmad bin Yazdad Ghulam al-Khallal, and his own son Abu'l Qasim Umar al-Khiraqi.[2] Al-Khiraqi's father was closely associated with the companions of Ahmad bin Hanbal, the master of the Hanbali school, and he mostly associated with Abu Bakr al-Marwadhi (d.275/899) after whom he became known as "Khalifat al-Marwadhi".[3] Abu 'Ali lead an ascetic

and pious life, and died on thursday the day of the feast of al-Fitr in the year 299 A.H. He prayed the 'Id al-Fitr prayer, went to sleep after lunch and died later on that day. He was buried at Bab Harb by the side of Ibn Hanbal's grave. He was a righteous man about whom people wrote.[4]

Al-Khiraqi studied under Abu Bakr al-Marwadhi, Harb al-Kirmani, and the two sons of Ibn Hanbal namely: Salih and 'Abd-Allah. He was also a pupil of Abu Bakr al-Khallal (d.311/923). Among those who studied under al-Khiraqi are the following Hanbali scholars: Abu 'Abd-Allah bin Batta (d.387/998), 'Abd al-Aziz bin al-Harith bin Asad Abu'l-Hasan al-Tamimi (d.371/981), Abu'l-Husayn bin Sam'un (d.387/998), and Abu Hafs al-'Ukbari (d.387/998).[5]

Al-Khiraqi established a reputation not only as one of the leading jurist-scholars of his time, but also as one of the pious servants of Allah. He was a man of many moral excellences, and devoted most of his time to the service of the Almighty Allah. In brief, he was religious, pious, righteous and a great Imam who combined between knowledge and practice, beside being very proficient in the school of Ahmad bin Hanbal.[6]

According to what was related by al-Hafiz Abu Bakr Ahmad bin 'Ali al-Khatib al-Baghdadi (d.463 A.H.), al-Khiraqi had a dream in which he saw 'Ali bin Abi Talib, the Commander of the Faithful, and 'Ali said to him: How beautiful the modesty of the rich is towards the poor! and al-Khiraqi said: Tell me

more, O Commander of the Faithful; and Ali said: And what is even more beautiful is the pride of the poor over the rich; and then 'Ali showed his palm to al-Khiraqi, and the following is what al-Khiraqi mentioned that he noticed on Ali's palm as it was raised towards him:

You were dead and then you became a living person

And soon you will be a dead person again

Therefore build a home in the eternal abode

And give up a home in the perishable abode.[7]

After it became impossible for Hanbalites to live in Baghdad because of the criticizing of the companions of the Prophet (Sahabah), al-Khiraqi left as an emigrant (muhajir) on the eve of the arrival of the Shi'i Buyids in Baghdad (334/945), sought refuge in Damascus, wherein, according to his own disciple, Abu 'Abd-Allah bin Batta al-'Ukbari, he died in the same year, i.e. 334 A.H., and was buried in Damascus.[8] Ibn Batta pointed out that he visited al-Khiraqi's grave; and added that he heard someone mention the cause of al-Khiraqi's death, and that is, he was beaten to death because he had denounced publicly in Damascus a reprehensible practice (munkar).9 Al-Khiraqi was buried in the cemetery of Bab al-Saghir, one of the six gates of Damascus.[10]

1.2 Al-Khiraqi : His Works

Al-Khiraqi wrote several works in accordance with the Hanbali school of law, among which is al-Mukhtasar fi'l- fiqh, also known as Mukhtasar al-Khiraqi. It is the only complete work that has survived of his numerous works. This is because al-Khiraqi left Baghdad as a Muhajir at a time when the Companions of the Prophet (Sahabah) were being criticized or insulted. He took refuge in Damascus where a Hanbali school was already taking root. He had left his personal library in Baghdad in the care of a friend in the Darb (or Dar) Sulayman. A fire broke out there and destroyed all the books, with the exception of the Mukhtasar.[11] He also had some works dealing with interpretations on the school (Takhrijat); but these works also were not put out before they were all destroyed by the fire, because he lived far away from the city.[12]

Sezgin points out that a selection of al-Khiraqi's Fawa'id has been transmitted by Abu'l-Qasim al-Lalaka'i (d. 418/1027). However, this work as attributed by Sezgin to al-Khiraqi, does not belong to 'Umar bin Husayn al-Khiraqi. It is the work of Abu'l-Qasim 'Abd al-Rahman bin Ubayd-Allah bin 'Abd-Allah bin Muhammad al-Hurfi al-Harbi and transmitted by Abu'l-Qasim Hibat-Allah bin al-Hasan bin Mansur al-Tabari.[13]

Ahmad bin Mustafa popularly called Tashkopruzade (b.901/1495) cited in his book Miftah al-Sa'adah wa Misbah al-Siyadah fi Mawdu'at al-Ulum, a work on Qur'anic exegesis

(Tafsir) entitled Tafsir al-Khiraqi. Nevertheless, he admitted that he had never seen or heard about such a work attributed to al-Khiraqi, but the only reason he cited it was because he found the mention of Tafsir al-Khiraqi in al-Suyuti's al-Itqan, but he believed that it was most probably a misprint (Tashif) for Tafsir al-Hufi. Hence he attributed the mistake to the transcriber (al-Nasikh) of al-Itqan.[14]

Moreover, Tashkopruzade cited in the same book mentioned above, another work attributed to al-Khiraqi entitled al-Risalah al-Shamilah a work on "ilm hisab al-dirham wa'l-dinar" a discipline through which numerical unknown values beyond algebraical equations are obtained.[15] It is doubtful if this work was written by 'Umar bin Husayn al-Khiraqi. Tashkopruzade himself did not specifically identify who al-Khiraqi is, though according to the index of his book it is 'Umar bin Husayn al-Khiraqi. Even if this work belonged to al-Khiraqi, one may accordingly conclude that it was one of those works that could not survive the fire outbreak in the Darb Sulayman.

2. THE MUKHTASAR

2.1 Manuscripts

Fuat Sezgin in his Geschichte des Arabischen Schrifttums, reports two manuscripts copies of the Mukhtasar. One is preserved in the collection of Dar al-Kutub al-Misriyyah in

Cairo, located under "Manuscript Copies of Hanbali Fiqh". Another is preserved in the collection of Azhar in Cairo, located likewise under "Manuscript Copies of Hanbali Fiqh".[17]

Beside the above mentioned copies, Muhammad Zuhayr al-Shawish, publisher of the Mukhtasar through al-Maktab al-Islami in Damascus and Beirut, refers to another manuscript, as he states that the printed version of the Mukhtasar was made possible through a private copy of a manuscript dated 970 A.H.[18] and owned by al-Shaykh Hasan al-Shatti (d.1382/1962). Al-Shawish points out that after he had compared the text of this Manuscript with that of the printed version of the Mukhtasar in al-Mughni of Ibn Qudamah with the cooperation of 'Abd al-Rahman al-Bani and 'Abd al-Qadir al-Arna'ut, and also after reviewing the controversial issues of Ghulam al-Khallal in Tabaqat al-Hanabilah of Ibn Abi Ya'la, certain additions and differences were noticed at some points which might affect the meaning, hence he enclosed such additions between square brackets in his printed version of the Mukhtasar, and those which are believed to be more authentic have been maintained, relying in most cases on the text of al-Mughni.[19]

2.2 Editions

Modern scholarship, both in the Muslim World and the West, owes to Muhammad Zuhayr al-Shawish, owner of the Printery "al-Maktab al-Islami" in Damascus and Beirut, the publication of the full text of al-Khiraqi's Mukhtasar fi 'l Fiqh. It was in Damascus (Syria) in 1378 A.H. that al-Shawish printed the first edition of the Mukhtasar at the expense of al-Shaykh Qasim bin Darwish Fakhru. In the year 1384/1964, he printed the Mukhtasar for the second time in Damascus through the financial help again of Ibn Darwish.[20] This book consists of 257 pages and includes a preface and a table of contents. Al-Shawish printed the third edition of the Mukhtasar in Beirut (Lebanon) in the year 1403 A.H. This book consists of 160 pages and includes a Preface and a table of contents.

An observable difference between the first two editions on one hand and the third edition on the other is that most of the explanatory remarks dealing with the textual differences between the manuscript-copy used by al-Shawish and the printed version of the Mukhtasar in al-Mughni, and which exist in the footnotes of the first and second editions, have been omitted in the third edition, and also those square brackets enclosing the various additions whether from the manuscript or from al-Mughni have been left out in the third edition except in a very few cases. Alternatively, certain comments pertinent to some issues of the Mukhtasar have been included in the

footnotes of the third edition.

Although the textual contents of the first and second editions are identical with the third edition, some few variations still exist between them in regard to the titles of the chapters and sub-chapters and also in regard to the table of contents.

Another remarkable difference at least between the second edition of the Mukhtasar and the third edition is that the pages begin with Arabic numerals from the very beginning of the third edition, while in the second edition for instance they begin with the Arabic Abjad (Alphabet) and the Arabic numerals only start from al-Khiraqi's Introduction of the Mukhtasar.

Furthermore, the title of the Mukhtasar in the second edition reads: Mukhtasar al-Khiraqi 'ala Madhhab al-Imam al-Mubajjal Ahmad bin Hanbal, while the title reads in third edition as: Mukhtasar al-Khiraqi Min Masa'il al-Imam al-Mubajjal Ahmad bin Muhammad bin Hanbal.

2.3 Commentaries

It is worth noting that no text of Hanbalism was so much commented upon like the Mukhtasar of al-Khiraqi. This manual of fiqh enjoyed so much status and authority that a large number of commentaries were written on it. Three hundred commentaries still existed in the time of a Hanbali historian, Yusuf bin 'Abd al-Hadi (d.909/1503).[21]

Among the early commentators of the Mukhtasar was Abu'l-Husayn bin Sam'un (d.387/997). Also, out of the principal commentary works on the Mukhtasar was the commentary of al-Hasan bin Hamid bin Ali bin Marwan Abu 'Abd-Allah al-Baghdadi (d.403/1011) a great Imam, a teacher and a mufti of his time. This work, according to Laoust, has been lost.[22]

Another commentary work on the Mukhtasar is that of al-Qadi Abu Ya'la Muhammad bin al-Husayn bin Muhammad bin al-Farra' (d.458/1066). This work is not totally lost. It is preserved in the Zahiriyyah Manuscript Collection, now moved to al-Asad National Library in Damascus (Maktabat al-Asad). This work is listed under the following catalog entries:

1. MS 2770, beginning from the section on voluntary prayer (2.8) and ending with the discussion on the months of Hajj (7.3)
2. MS 2747, beginning from the section on Marriage (27.1) to the end of this chapter.
3. MS 2746, which begins from the section on Blood money for injuries (40.1) to the end of the book.

The commentary work entitled al-Mughni of Abu Muhammad Muwaffaq al-Din 'Abd-Allah bin Ahmad bin Muhammad bin Qudamah al-Maqdisi (d.620/1223) is distinguished not only as one of the most important works in the Hanbali school of law but also as the greatest of all the commentaries on the Mukhtasar. This work has been published in Cairo by Rashid Rida (12 vols., 1341-8/1922-30),[23] and also by Maktabat al-Qahirah (10

vols., 1388/1968). It has also been published in Riyadh-Maktabat al-Riyad al-Hadithah- by Dar al-Ifta' (10 vols., 1401/1981).

Another survived but unpublished commentary work is the commentary of Abu Talib 'Abd al-Rahman bin 'Umar bin Abu'l-Qasim al-Basri (d.684/1285) under the title al-Wadih. The manuscript copy of this work is located at Chester Beatty Library in Dublin, Ireland.[24]

Another known commentator was Muhammad bin 'Abd-Allah al-Zarkashi al-Misri (d.772 A.H.) who commented upon the Mukhtasar in two ways: 1) In a detailed and completed form. 2) In an uncompleted and abridged form, and was completed later on by another Hanbali scholar.[25]

The Mukhtasar was not only commented upon in a prosaic style but was also commented upon by some scholars in the style of words composed metrically, such as Ja'far bin Ahmad al-Siraj (d.500 A.H.)[26] and Yahya bin Yusuf bin Yahya bin Mansur bin Mu'ammar bin Abdal-Salam al-Ansari al-Sarsari (b.588 A.H.-d.656 A.H.).[27] All such voluminous and valuable commentary works on the Mukhtasar distinctly unfold the great importance and value of this manual on fiqh.

2.4 Characteristics and Methods of Al-Khiraqi

Al-Khiraqi was described by Abu Ya'la (d.458/1066) as a great learned man ('allamah), proficient in the school of Ibn Hanbal, religious and pious.[28] Ibn al-Jawzi (d.597 A.H.) characterized him as a fiqh-minded person (faqih al-nafs) capable of expressing himself properly and very eloquent.[29] He was recognized by Ibn Qudamah (d.620/1223) as a great Imam, righteous, religious and a pious man, marked by knowledge and practice.[30] Ibn Kathir (d.774 A.H.) distinguished him as one of the leading jurist-scholars and servants of Allah, a man of many excellent qualities and religious devotions.[31]

On the whole, al-Khiraqi established a reputation not only as one of the greatest legal scholars in the history of Hanbalism but also as a devout servant of Allah. He was a man of many praiseworthy qualities, characterized by righteousness, piety, knowledge and practice.

Al-Khiraqi was also a skilled writer capable of presenting legal issues in a generally clear manner. He was eloquent and meticulous in the choice of words to express those issues clearly though the Mukhtasar was composed in an abridged and concise form.

A general feature of his methodology is the treatment of each subject first by providing its definition,[32] unless he thought the subject needed no explanatory remark in which case he begins by pointing out its legal qualification[33] or its

conditions or prerequisites.[34] Other times he begins simply by explaining the various divisions or classifications,[35] then followed by a detailed discussion of the issues pertaining to the subject or he begins straightaway with discussions of the legal issues.

Another feature of his methodology is how he ends his discussion on the subject. In most cases he seems to end the discussion on one subject and moves on directly to another except in a few cases when he ended discussion of certain subjects by a special closing statement: "Allah knows best", or "Allah knows that which is right".[36]

Al-Khiraqi displays erudition and a good knowledge of the legal sources and subject.[37] He followed a standard form of narration of reports specifically from Ibn Hanbal whom he usually refers to by his kunyah: Abu 'Abd-Allah, except in a very few instances when he would mention him by his first name: Ahmad.[38]

Al-Khiraqi was very careful in his presentation of information. He was capable of presenting an impressive amount of factual data in a very few words such as he did to recount an historical event connected with the Black Stone[39] which the Caramathians took possession of in the year 317 A.H. and was not brought back to its place when the writing of the Mukhtasar was completed until the year 337 A.H.,[40] i.e. three years after the death of al-Khiraqi.

2.5 Subsequent Transmission and History of Work

The Mukhtasar was so much an important source of information on Hanbali jurisprudence; hence various Hanbalis over the years studied this work. Some studied the Mukhtasar directly under the Shaykh "al-Khiraqi" and transmitted it subsequently.

One of those who received the Mukhtasar by one of the recognized methods of learning i.e. by hearing (Sama') directly from the Shaykh's mouth, was al-Hasan bin Yahya bin Qays Abu Bakr al-Muqri' who transmitted it to several people including Abu 'Abd-Allah bin Hamid and Abu Talib al 'Ashshari.[41] Ibn Hamid also read al-Khiraqi's work to Ahmad bin Salim al-Khatli for confirmation.[42]

Muhammad bin Ahmad bin Isma'il bin Isa bin Isma'il Abu'l-Husayn bin Sam'un (d.387/997) learned the Mukhtasar by reading it to the Shaykh in order to confirm the correctness of what is attributed to him, and several people listened to its reading including al-Shaykh al-Zahid Abu'l-Husayn al-Qazwini. The Mukhtasar was also transmitted by al-Qazwini to many people, among them was al-Mubarak bin 'Abd al-Jabbar who also transmitted it to other people.[43]

Similarly, Ibn Qudamah read this important work of al-Khiraqi to al-Shaykh 'Abd al-Qadir al-Jilani (d.561/1166 in Baghdad).[44] He also read it to al-Mubarak bin al-Tabbakh in Makkah.[45]

Obviously, al-Khiraqi's work enjoyed so much recognition. Its authenticity or correctness was confirmed, and careful studies were undertaken under the guidance of al-Khiraqi himself and other recognized scholars subsequently, thus producing over the years several experts and excellent teachers of the Mukhtasar.

3. IMPORTANCE OF AL-KHIRAQI IN HANBALI LAW

3.1

Al-Khiraqi was an influential and distinguished figure in the Hanbali school. Ibn Qudamah's encyclopaedic work based on the Mukhtasar signals strongly to al-Khiraqi's importance in Hanbali law and the authoritativeness of his work. Ibn Qudamah did not only confirm his importance and authority by his great commentary but also wrote another work on the basis of al-Khiraqi's authority, entitled: Zawa'id al-Kafi 'ala al-Khiraqi which subsequently was transformed into poetical verses by Yahya bin Muhammad al-Sarsari (d.656A.H.).[46]

Al-Khiraqi's authority and expertise in Hanbali law are clearly indicated also by works of various scholars who depended greatly on the Mukhtasar, such as was done by Yahya bin Muhammad al-Sarsari, who composed metrically major issues of Hanbali jurisprudence totalling two thousand and seven hundred and seventy verses under the title: al-Durrat al-Yatimah wa'l-Mahajjat al-Mustaqimah, relying in most cases on

the Mukhtasar of al-Khiraqi.[47]

Other examples of works written and whose sources of authority and inspiration are drawn from al-Khiraqi are: Zawa'id al-Hidayah 'ala Mukhtasar Abi'l-Qasim al-Khiraqi by Abu'l-Khattab Mahfuz bin Ahmad al-Kaludhani (d.510 A.H.), al-Durr al-Naqiyy fi Sharh al-Faz al Khiraqi, and al-Thaghr al-Basim fi takhrij ahadith Mukhtasar Abi'l-Qasim both written by Jamal al-Din Yusuf bin 'Abd al-Hadi (d.909 A.H.).[48] Ibn Badran also has a book entitled: Kifayat al-Murtaqi ila fara'id al-Khiraqi.[49]

Al-Khiraqi was also quoted as an authority on fiqh issues, a fact which additionally confirms the importance of this man in Hanbali law, such as was done by Ibn Taymiyah (d.751/1350).[50]

Confirming still the importance of al-Khiraqi and his work, Ibn Qudamah memorized the whole of the Mukhtasar,[52] and so did the distinguished and famous grammarian Abu Muhammad Jamal al-Din 'Abd-Allah bin Yusuf bin Ahmad bin 'Abd-Allah bin Hisham al-Ansari (born 708 A.H.) as he committed the whole of the Mukhtasar into memory in less than four months, an event that occurred five years before his death.[53] Hence, al-Khiraqi's work not only enjoyed great authority in Hanbali law but was also very instrumental in the education and formation of numerous generations of legal scholars.

Despite the great value and importance attached to the Mukhtasar, a contemporary of al-Khiraqi, Abu Bakr 'Abd al-Aziz

bin Ja'far bin Ahmad bin Yazdad bin Ma'ruf also known as Ghulam al-Khallal (d.363/974) did not agree with some of the views of the Mukhtasar. Both al-Khiraqi and Ghulam al-Khallal studied under the same master: Abu Bakr Ahmad bin Muhammad bin Harun popularly called al-Khallal (d.311/923);[54] and not only did Ghulam al-Khallal disagree with some of al-Khiraqi's views but also did not always accept his master's interpretations of Ibn Hanbal's thought. Ibn Abi Ya'la mentions ninety-eight points of divergence between Ghulam al-Khallal and al-Khiraqi, and also nine questions (masa'il) on which Ghulam al-Khallal disagrees with his master.[55] Nevertheless, the points of divergence between the two contemporaries seem rather to be more than ninety eight. Other points of disagreement between them on the issues of the Mukhtasar have been pointed out by Ibn Qudamah in the Mughni. On the whole, I have tracked down a total of one hundred and seven points of divergence between them on the issues of Mukhtasar, from both the Tabaqat and the Mughni.[56]

4. THE TRANSLATION AND ANNOTATIONS

4.1 Principles of the Translation

The translation of the Mukhtasar is based on the third published edition of Zuhayr al-Shawish, owner of al-Maktab al-Islami, in Beirut, and in the year 1403 A.H. drawing on the commentary works: Sharh Mukhtasar al-Khiraqi of Abu Ya'la al-

Farra' (d.458/1066) which has not been published, and _al-Mughni_ of Ibn Qudamah (d.620/1223), using for this work the 1388/1968 edition published in Cairo by Maktabat al-Qahirah.

The technical terms have though been translated in most part, I have still maintained them in the text while providing somewhat a clear and lucid explanation of them in the annotations and according to their technical meanings. For some terms that have precise renderings, their English equivalents have been used instead without the need for additional explanations in the annotations. On the contrary, those terms that have no simple English rendering, have been preserved untranslated while giving their full meanings or detailed definitions in the annotations.

The translation work therefore, is not only word for word translation but has also various cross references which shed more light on the terminology and legal expressions of the _Mukhtasar_, hence providing clarity and better understanding of the entire text.

This translation also marks off the textual variants between al-Shawish's edition of the _Mukhtasar_ and Ibn Qudamah's text of the _Mukhtasar_ in _al-Mughni_, with [...] indicating the additional passages in al-Shawish's version which are not contained in Ibn Qudamah's text, and <...> for the additional passages in Ibn Qudamah's version. I have also used (...) to enclose my own additional statements to provide clarity to the text.

This thesis presents for the first time a translation of the entire text of the Mukhtasar under the principal chapters (Kutub, plural of Kitab) and sub-chapters (Fusul, plural of Fasl) with numerical digits alone representing the main chapters, and digits combined with decimals representing the sub-chapters.

4.2 Principles of the Annotations

The translation is an annotated one. Hence, critical or explanatory notes or comments have been furnished in the annotations section of this work. The annotations consist particularly of explanations of technical terms. They also include discussion of legal controversies some of which relating to disagreements between al-Khiraqi and his contemporary Abu Bakr Ghulam al-Khallal. Such points of divergence between them have been marked by the letter (D). Discussion of legal controversies between Hanbali scholars or other legal scholars on certain issues have been noted as well.

The annotations contain also cross references to other works pertinent to the subject of discussion. Personalities of the Mukhtasar as well as various hadiths or reports connected with them have been cross-referenced. Relevant information such as definitions, explanation of subject headings, investigation and clarification of reports related by al-Khiraqi and the tracking down of his statements that are

indicative of legal disputes among scholars have all been included and dealt with in the annotations.

Verses of the Qur'an have been identified in the annotations with the verse number and its Surah cited. Sources of Hadith-reports have also been identified. Also, certain texts of al-Khiraqi which seem somewhat unclear in the translation have further been explained or expanded upon. Hence, all these annotations combined have helped obviously in highlighting and enhancing the clarity of the translation work.

For technical reasons, which should not disturb the expert reader, no diacriticals have been used throughout this work, except in the bibliography and glossary/index.

4.3 Translation

In the Name of Allah, The Beneficent, The Merciful[57]

[All praise is due to Allah, the Lord of the Worlds,[58] and may the blessings of Allah be upon our leader Muhammad,[59] the Seal of the Prophets,[60] and also upon his pure family and his chosen companions and his wives, mothers of the faithful.][61] Al-Shaykh Abu 'l-Qasim Umar bin al-Husayn bin 'Abd-Allah al-Khiraqi,[62] may Allah have mercy on him, said: "I have abridged this book in accordance with the school (madhhab)[63] of al-Imam Abu 'Abd-Allah Ahmad bin Muhammad bin Hanbal,[64] may Allah be pleased with him, so that it may be easy on its learner, [while hoping for the

reward of Allah the Almighty and Most Exalted, and from Him I ask success in achieving that which is right.]

1. Ritual Purity (Taharah)[65]

1.1 Water for Purification

He said: Purity is achieved through the use of absolutely clean water, namely that which is not annexed to any other noun such as bean water, chick-pea water, rose water, saffron water, and so on, from among substances whose names always occur in conjunction with the noun water. Partial ablution (wudu')[66] can be performed with such water into which has fallen anything from what we have mentioned, and so on, provided it is a small quantity and there is no change noticed of the water in terms of taste or color, or if no considerable amount of odor is smelt, to the point that the water could be attributed to it.[67] Wudu' should not be performed with water that has already been used previously for wudu'.[68]

If water measures two qullahs[69] which is equivalent to five qirbahs[70] and then an impurity drops into it, but there is no change noticed of the water in terms of taste or odor or color, such water is (considered) clean, unless the impurity is urine or diarrheic human feces. Such could render the water impure, except if the water originates as from the ponds on the way to Makkah,[71] or a body of water

such as originating from a large quantity of water that can not be drained; such water cannot be rendered impure. If any living thing that has no flowing blood dies in a small quantity of water, for example a fly, scorpion, or beetle and their like, that will not render the water impure.[72]

He said: Wudu' should not be performed with the water from which any animal whose meat is unlawful to eat, except the cat and whatever is lower than it in terms of creation, has drunk. He said: Any vessel in which an impurity dissolves as a result of a dog's salivation or urination, and so on, must be washed seven times, one of which must be a scouring with dust.

If a person on a journey has two vessels, one vessel unclean and the other clean, and the person is unsure as to which is which, then the contents must be poured out of them both, and tayammum[73] performed instead.[74]

1.2 Vessels

He said: Any leather from a dead animal whether tanned or untanned is unclean. Similarly, a vessel made from the bones of a dead animal is unclean.[75]

It is reprehensible to perform wudu' in a golden or silver vessel; however if wudu' is performed in it, it is accepted.[76] The wool and the hair from the dead animal are clean.[77]

1.3 Toothstick and the Sunnah[78] of Wudu'

He said: The use of toothstick to clean the teeth is sunnah recommended at the time of every prayer (salah)[79] unless one is fasting at which time a person should refrain from that between the time of zuhr[80] prayer until sun set. (It is also sunnah for a person) to wash the hands three times upon waking from a night's sleep before putting the hands in the wudu vessel,[81] and also to pronounce the tasmiyah[82] at the start of performing wudu, [and to excessively rinse the mouth][83] and to draw water up the nose unless one is fasting, and also to comb the beard with the fingers, and to use fresh water for the ears -- for both the outside and the inside of the ears -- and to clean between the fingers, and to wash the right limbs before the left ones.

1.4 The Obligatory Acts of Purification

He said: Obligatory acts of purification are (as follows): (To find) clean water, to remove ritual impurity,[84] to form the intention for purification, to wash the face and that is, from the roots of the hair down to the jawbones and the chin and to the base of the ears. The mandible must also be taken care of; that is the part between the beard and the ear. The mouth and the nose are (considered) part of the face. (It is also obligatory) to wash the hands to the elbow; including the elbows

themselves.

It is furthermore obligatory to wipe the head, and to wash the feet to the ankles -- which are the two protruding bones -- and to complete the purification limb after limb, in accordance with the injunction of Allah, the Almighty and Most Exalted.[85]

It suffices that a person perform wudu' by washing every limb once, however, three times is preferable. Obligatory prayer can be carried out with a wudu' that has been performed for voluntary prayer.

When in a state of sexual impurity or state of menstruation or postpartum bleeding, Qur'an should not be read. Unless a person is in a state of purity, Qur'an should not be touched. Allah knows best.[86]

1.5 Cleansing the Private Parts and the State of Impurity

He said: There is no need for a person to cleanse the private parts after sleeping or after breaking wind. Cleansing of private parts is meant to cleanse whatever is discharged from the two openings (anal and genital).

As long as a person sticks to the two outlets, it is good enough to use three (little) stones to cleanse the impurities. It is not acceptable to use less than that number of stones except the total number of stones prescribed. If three (stones) cannot rid the person of the impurity additional stones must be used until the private

parts have been cleansed. A piece of wood or rag and any material that can be used for cleansing except for dung, bones or food, can serve the same purpose as stones.[87] A large stone that has three protrusions is treated like three (little) stones.[88] However, beyond the excretory outlets, only water is good enough for cleansing.

1.6 What Voids the State of Purity

He said: Anything discharged from the genital or anal organs, or the discharging of excrement or urine from other than the (normal) outlets, voids the state of purity; and so is the loss of consciousness[89] unless it is due to a short sleep in the sitting or standing positions. Also, apostasy from (the religion of) Islam, touching the sexual organ, excessive vomiting, excessive bleeding, discharge of excessive worms from wounds,[90] eating the meat of a slaughtered camel,[91] washing the deceased,[92] and to fill with lust resulting from contact between the male's body and the female's.[93]

If a person is certain of having achieved purity but is uncertain about falling into a state of impurity, or if certain about having fallen into a state of impurity but is uncertain about if purity has been achieved, then the (current) state of the person is determined in accordance with whatever state he or she is certain of (having achieved) in either case.

1.7 What Requires Total Ablution (Ghusl)[94]

He said: What requires ghusl is the discharge of semen, contact involving the two sexual organs, [apostasy from Islam],[95] a disbeliever's acceptance of Islam[96] or the purification of oneself from menstrual and postpartum bleeding. If a woman menstruating or someone in a state a sexual impurity or an idolater puts his or her hands in water, such water is (still) clean. A man should not perform wudu' with the surplus of water used by a woman to purify herself if she has been alone in (the use of) the water.[97]

1.8 Performing Ghusl from Sexual Impurity

He said: A person sexually impure should (first of all) cleanse himself of any physical impurity found on the body, and then perform wudu' just like the wudu' for the prayer; then pour (water) over the head three times in order to wet the roots of the hair and then pour water abundantly over the rest of the body.[98] If the body is washed once with the water poured all over the head and body without performing wudu', it is good enough, provided the mouth has been rinsed and wash drawn up the nose, and the intention for (all) that has been to fulfill the ghusl and wudu' (inclusively),[99] though the person has given up that which is preferable.

Wudu' should be performed with (a quantity of water

measuring) one mudd, which is equivalent to one and one-third [Iraqi][100] ritl.[101]

A person must wash himself with (a quantity of water measuring one sa'[102] which is equivalent to four mudds. If the bath can be completed with less water than (the above quantity), it is acceptable. A woman must undo her hair to cleanse herself after menstrual bleeding,[103] but she does not have to undo it to cleanse herself after having fallen into a state of sexual impurity, if she can wet the roots of the hair. Allah knows best.

1.9 Tayammum

He said: Tayammum may be carried out (whether) on a short or long journey if it is time for prayer and after the traveler has searched[104] for water but could not find it. It is preferable to delay the tayammum [until the last moment of prayer time]. (Nevertheless), if the tayammum is carried out at the beginning of the time (of prayer) and the prayer performed after that, it is acceptable even if water is found later within the (fixed) time of that prayer.

He said: Tayammum is carried out by striking both hands once upon clean ground, that is (pure) dust. Intention for doing that must be for the purpose of performing the prescribed prayer. Then the face and both palms are wiped with the hands. If a person strikes the hands upon (a place) not clean, the tayammum is not valid. If a person has a

wound or a terrible sickness, while sexually impure, and fears (danger) on himself in case touched by the water, then the person must wash the healthy part of his or her body and then perform tayammum for the remaining part of the body that the water could not touch.

After tayammum has been performed, the current prayer can be performed with it and as well as the missed prayers, provided they are obligatory. (The present) voluntary prayer can also be performed until it is time for the next obligatory prayer.

He said: If there is fear of danger of thirst, a person can keep the available little water (to drink) and (instead) perform tayammum (for the prayer) and there is no need to repeat the prayer. If a person forgets that he has been in a state of sexual impurity and performs tayammum (only) to remove (minor) impurity, the tayammum cannot be accepted (for both).

He said: If after performing tayammum, water becomes available while the prayer is being performed, the person should discontinue[105] the prayer and then perform wudu'; or the ghusl if sexually impure, and then perform the prayer again.

He said: If a person suffering from a bone fracture binds the splints after having achieved ritual purity, as long as the splints are bound only on the fractured part, the person can thenceforth wipe on the splints any time he

or she has fallen into a state of impurity until they are unbound (again).

1.10 Wiping on the Khuff[106]

He said: A person who wears the khuff in a complete state of purity, and then sullies (afterwards) the state of purity,[107] can (just) wipe over the khuff thenceforth. This law holds (good) for a day and a night in the case of the non-traveler, and for three days and nights in the case of the traveler. However, if it is removed before the end of the period, the wudu' is performed again[108] (with the feet washed completely before again putting on the khuff). If a non-traveler is in a state of impurity and has not wiped over (the khuff) until he or she is traveling, then this person may continue to wipe over the khuff as a traveler, considering the starting point as the time from which he or she falls into a state of impurity.[109]

He said: If a non-traveler is in a state of impurity and wipes (over the khuff) as a non-traveler, and then travels (afterwards), the person may continue to wipe over the khuff like a non-traveler[110] until the khuff is removed. <If it is wiped over, as a traveler, for a day and night or more and then the person becomes a non-traveler or returns from the journey>, [the khuff may be wiped over still as. in a state of non-traveling[111] before it is removed]. The wiping must be carried out over a pair of khuff or over

anything that can be used in its place, such as a short thigh-khuff or its like, which ends above the ankles, [that is, the two protruding ankle bones].

Heavy socks that cannot slip from the feet can also be used. If the socks can only stand firmly by the (help of the) shoes, then the shoes should (rather) be wiped on; however, if the shoes are removed, then the (state of) purity is lost. If a hole is noticed in a khuff from which a part of the foot is exposed, wiping over the khuff is not acceptable. The wiping must be performed entirely over the surface of the foot (covered by the khuff). It is not permissible to wipe over the bottom of it excluding the top. Man and woman must both do the same.

1.11 Menstruation

He said: The minimum duration of menstruation is one day and one night, and the maximum is fifteen days. Should the bleeding of any woman extend beyond the maximum monthly period, and if she is such that she knows at what time her bleeding starts and she can distinguish the forms of bleeding, the initial form, black, thick and stinking, and the final bleeding in its fine, red form, she must refrain from her prayers from the time of the blood's appearance (until the time the bleeding should have ended). She must then perform her ghusl,[112] and then perform wudu' at (the time) of every prayer and pray.

If her blood is such that it could not be distinguished one from the other, but she is aware of the (total number of) days in a month during which she usually has her period, then she must refrain from her prayers during those (number of) days, and then perform her ghusl when she has passed them; but if she could not remember[113] the (total number of) days for her period, she should relax only six or seven days every month.

The woman just beginning to experience the monthly period must take precaution (in her case) and (only) relax for a day and night, then perform her ghusl, and perform wudu' at the time of every prayer before the prayer is performed. If the bleeding stops in fifteen days, she must perform her ghusl as soon as it stops. She must follow the same steps (for her second monthly period) and again (for the third monthly period), and if the situation is still the same as in all her periods, then she will go according to it thenceforth. She must repeat those days of obligatory fasting if observed during the past three monthly periods. If her bleeding continues but the blood is such that its two forms could not be distinguished, then she must relax (for her period) six or seven days every month,[114] because most women have their period for that number of days.

The brown and opaque discharge experienced toward the end of the days of menstruation are considered part of the menstruation. It is lawful to have pleasure with the

menstruating wife but not through the vagina. After the bleeding has stopped, the husband should not have sexual relations with her until she has performed her <u>ghusl</u>. He must not have sexual relations with the <u>mustahadah</u>[115] unless he fears the risk of his committing adultery (as a result of sexual deprivation).[116] A person suffering from incontinence of urine or discharge of excessive <u>madhy</u>[117] (prostatic fluid) which never stops is treated like a <u>mustahadah</u>, and must perform <u>wudu'</u> for every prayer after cleansing the sexual organ.

The maximum period for post partum bleeding is forty days; there is no minimum limit. As soon as the woman finds herself clean of the postpartum bleeding, she is considered as in a state of purity and must perform her <u>ghusl</u>. It is recommended that her husband not have (sexual) contact with her through the vagina until she has completed forty days. If a woman is aware of the days of her period, but then notices her bleeding has extended beyond the total number of days known to her, she must not be upset by the additional days unless that has been experienced three times, then she must assume that her monthly period has changed, and so she should switch to this schedule and give up the previous schedule. If some days have already been fasted during the three instances, she must repeat them if they are obligatory fasting. If she notices bleeding prior to her known days of the monthly period, she must not be upset by that, unless it

has occurred to her three times. If a woman is aware of the days of her monthly period but soon notices herself clean of menstruation before the expiration of her normal days, she is considered as in a state of purity, and must perform her ghusl and perform her prayer. However, if the bleeding resumes, she should not be upset by that[118] until her next period has arrived. [If the pregnant woman notices bleeding, she should not be upset by that], because the pregnant woman does not menstruate. If she notices it two or three days before delivery (of her baby) that is considered postpartum bleeding. If she notices bleeding while she is at the age of fifty she must not give up performing her prayers or fasting, but must repeat the (obligatory) fast as a precaution.[119] If she notices bleeding after the age of sixty, there is no problem (any more), for this is certainly not the monthly bleeding,[120] and she can fast and perform her prayers, and not repeat the precautionary fasting.

That the mustahadah must perform her ghusl before every prayer is the most stringent thing.[121] If she performs her wudu' for every prayer that is just good enough. Allah knows best.

2. (Ritual) Prayer

2.1 The (Prescribed) Time of Prayer

He said: When the sun begins to decline (in the sky), then it is obligatory to perform Zuhr (noon) prayer, and when the shadow of anything is equal to its height, that ends the (Zuhr prayer) time. If the shadow's length increases a certain amount, then it is obligatory to perform 'Asr[122] (afternoon) prayer. When the shadow of anything is twice its height, then the prime-time[123] is over (for 'Asr prayer).

Whosoever completes one rak'ah[124] before sunset has achieved it, but this must be delayed only if it is necessary.[125] When the sun disappears (beyond the horizon), then it is obligatory to perform Maghrib[126] (sunset) prayer. It is not recommended to delay it until the disappearance of the twilight.

When the twilight disappears -- that is the red (in the sky) in the case of a journey, and the white in the case of being settled[127] -- it is then obligatory to perform the final 'Isha[128] (night) prayer up until one-third of the night is passed. In case of a non-traveler, it is possible the red might appear but could be obscured (from view) by the (city) walls, causing a person to believe that it has disappeared; hence, when the white disappears, it is then (quite) certain the red has disappeared. When a third of the night has passed, the prime-time[129] is over (for 'Isha prayer), however, the time of emergency extends until the appearance of the second dawn -- which is the white that

scatters over the sky from the east, after which time no darkness is seen.

When the second dawn[130] appears, it is then obligatory to perform Subh[131] (morning) prayer; its time lasts until before sunrise and whosoever completes a rak'ah before sunrise has achieved it, but it is considered as prayer carried out in a time of emergency.

Performing the prayer at the initiation of the period is preferable except in the case of the final 'Isha and in the case of Zuhr prayer when the heat is intense (at this time). When the menstruating woman has become pure, or the disbeliever accepts Islam, or the child reaches majority before sunset, they should each perform Zuhr and 'Asr prayer (before performing the Maghrib prayer). If the child reaches majority or the disbeliever accepts Islam or the menstruating woman becomes pure before the appearance of the dawn, they should (each) perform Maghrib prayer and the final 'Isha prayer[132] (before performing the morning prayer).

If consciousness is lost (and then regained later on) all the prayers which were (obligatory) on the person during the unconsciousness must be made up.[133] Allah knows best.

2.2 Adhan[134] (The Call to Prayer)

He said: Abu 'Abd-Allah,[135] -may Allah have mercy on him, follows the adhan of Bilal,[136] and that is:

"Allah is the greatest. Allah is the greatest.

I bear witness that there is no god but Allah.

I bear witness that there is no god but Allah.

I bear witness that Muhammad is the Messenger of Allah.

I bear witness that Muhammad is the Messenger of Allah.

Come to prayer. Come to prayer.

Come to success. Come to success.

Allah is the greatest. Allah is the greatest.

There is no god but Allah."

The iqamah[137] (call to start the prayer) is as follows:

"Allah is the greatest. Allah is the greatest.

I bear witness that there is no god but Allah.

I bear witness that Muhammad is the Messenger of Allah.

Come to prayer. Come to success.

It is time for prayer. It is time for prayer.

Allah is the greatest. Allah is the greatest.

There is no god but Allah."

In pronouncing the adhan, the intonation is extended long enough, but for the iqamah it is expressed succinctly. In the adhan for the morning prayer, the following must be added: "Prayer is better than sleep"[138] -- two times.

If the adhan is pronounced before its time except for the Fajr (dawn) prayer, it has to be repeated when it is time. Abu 'Abd-Allah does not recommend the adhan to be pronounced except by a person in a state of purity.[139] The adhan is repeated if it is pronounced by a person in a state of (sexual) impurity.

We disapprove of a person who performs the prayer without having pronounced the adhan or the iqamah, but such person is not required to repeat the prayer.

To pronounce the adhan, the ears are grasped with the fingers and the face turned to the right on pronouncing "come to prayer", and turned to the left on pronouncing "come to success", but without moving the feet (away from the direction of the qiblah).[140] It is recommended that anyone who hears the adhan pronounced by the Muadhdhin[141] (caller to prayer) responds likewise.[142]

2.3 Facing the Qiblah

He said: In a state of profound fear[143] (due to war) or while being pursued by the enemy, a person may begin the prayer facing the direction of the qiblah, and then completes the prayer facing any other direction whether by walking, standing or riding on horseback, and while making appropriate gestures as far as possible, and while still performing the sujuds[144] (with gestures) lower than those of the ruku';[145] it shall be likewise regardless of whether the person is being pursued or if the enemy is pursued and it is feared that the enemy might escape.[146] According to another report from Abu 'Abd-Allah, -may Allah have mercy on him, in the case where the enemy is pursued the prayer can be accepted only if it is performed as in a state of safety.[147]

A person may also perform voluntary prayers riding a

camel[148] on a journey following our descriptions[149] of the performance of prayer in a state of fear.

Apart from these two situations,[150] obligatory or voluntary prayers may not be performed except by facing the (direction of the) Ka'bah.[151] A person who can see the Ka'bah must face it precisely; if it cannot be seen, then efforts[152] should be made to determine its direction (and face towards it).

If two mujtahids[153] differ in their opinions as to which direction is the qiblah, then neither of them is to follow the other; however the blind [or the ordinary person][154] should follow the most reliable of the two of them according to one's judgment.

If a person prays after having made effort to determine the direction of the qiblah and then finds out (later on) that a mistake has been made in the qiblah, the prayers do not have to be repeated.

If a non-traveller endowed with eyesight performs the prayer while a mistake is made in the qiblah or if a blind person prays without any guidance (as far as the qiblah is concerned), they must both repeat their prayers.

The guidance of a mushrik[155] (polytheist) can not be followed in any case, because what is conveyed by a disbeliever in terms of information, report or testimony can not be accepted, for the disbeliever cannot be trusted.

2.4 The Manner of Prayer

He said: When a person stands up to perform the prayer the following must pronounced: "Allah-u Akbar",[156] and the intention for (pronouncing) those words must be for the purpose of performing the prescribed prayer, namely the intention for pronouncing "Allah-u-Akbar." We know of no difference of opinion among the Ummah[157] (Muslim community) concerning the assertion of intention as being obligatory for the prayer. The prayer is only effective if intention is formed before it is performed.

Intention is accepted as long as it has not been broken, provided it is formed before pronouncing the takbir[158] when it is time (for the prayer). The hands are raised up to the lobes of the ears or parallel to the shoulders,[159] then the right hand placed on the left elbow and both of them placed below the navel[160] and then (the following) pronounced:

"Glorified are You O Allah, and praise is due to You. Blessed is Your name. Exalted is Your Greatness, and there is no god but You."

Refuge is then sought with Allah (from Satan)[161] and then the person recites, "All praise is due to Allah, the Lord of the Worlds",[162] beginning with (the words), "In the name of Allah, the Beneficent, the Merciful", but should not recite these words aloud,[163] and when the person reaches "wa la 'l-dall in"[164] (and not of those who have gone astray),

then he or she must also say (after that) "Amin".[165]

Then a surah[166] (Qur'anic chapter) may be recited beginning with (the words): "In the name of Allah, the Beneficent, the Merciful" [but (these words) must not be recited aloud].[167] When the recitation of a surah is completed, the person pronounces, "Allah-u-Akbar" while bowing to the knee, and raising the hands as at the beginning, and places the hands spreading the fingers apart on the knees[168] and stretching the back (forward) without raising the head or lowering it, and then says while in the bowing position, "Glorified is my Lord, the Greatest", three times, and this is the minimum number to complete it. However if it is pronounced only once, it is valid.

[Then the head is raised] (while returning to the standing position) and followed by the statement: "Allah hears one who praises Him," and the hands are raised as at the beginning, then followed by the statement, "O our Lord, all praise is due to You (alone). (A quantity) that will fill the heaven, fill the earth, and fill anything else You wish after that." If the person is a ma'mum[169] then the following is said, "O our Lord, all praise is due to You (alone)" and then takbir is pronounced as the person falls down in sujud; but here, raising the hands is not required (as before). The first part of the body to touch the ground (during prostration) are the knees, then the hands,[170] then the forehead and then the nose. The person praying should

be (well) balanced in the sujud, and must keep the upper arms away from the two sides, keep the stomach from the thighs, and the thighs away from the legs; and then lean on the fingertips and say (the following): "Glorified is my Lord, the Most High" three times. However, if it is said only once, that is valid.

The head is then raised while pronouncing the takbir and the person sits up straight on the left foot while fixing the right foot (to the ground), and may say: "O my Lord forgive me" [three times][171] then pronounces the takbir and falls prostrate, then raises the head with (another) takbir and stands up, (beginning) with the fronts of the feet while leaning against the knees, unless that causes hardship in which case the person's weight may be supported on the ground.[172]

The person performs in the second rak'ah just as it has been performed in the first; and when in the second rak'ah to pronounce the tashahhud,[173] the sitting position must be such as that described between the two sajdahs,[174] then the left palm of the hand is spread on the left thigh, and the right hand on the right thigh, and the thumb is suspended over the middle finger, and the index finger extended, and then the tashahhud pronounced by saying (the following): "All salutations are due to Allah, and benediction and pleasures all come from Allah". May the peace (of Allah) be upon you, O Prophet, and of His mercy and benedictions. May

the peace (of Allah) be upon us and upon the righteous servants of Allah. I bear witness that there is no god but Allah, and I bear witness that Muhammad is His servant and Messenger." This is the tashahhud that the Prophet, may the blessing and peace of Allah be upon him, taught 'Abd-Allah bin Mas'ud,[175] may Allah be pleased with him.

The person then stands up while pronouncing the takbir in the way that one rises from sujud; and then finally sits on the hips in order to pronounce the final tashahhud, and fixes the right foot (to the ground) and places the inside of the left foot under the right thigh, and leaves the buttocks in contact with the ground. The praying person sits on the hips only in the prayers in which two tashahhuds are pronounced, and (only) in the final tashahhud. The tashahhud is pronounced as in the first sitting position, and blessings invoked on the Prophet, may the blessing and peace of Allah be upon him, by saying (the following): "O Allah, bless Muhammad and the family of Muhammad as You blessed Abraham and the family of Abraham. Certainly You are Praiseworthy and Glorious. Also grant Muhammad bounties and the family of Muhammad, as You granted Abraham bounties and the family of Abraham. Certainly You are Praiseworthy and Glorious."

It is recommended to seek refuge (with Allah) from four things by saying the following: "I seek refuge with Allah from the torment of the hell-fire, and I seek refuge with

Allah from the torment of the grave, and I seek refuge with Allah from the wickedness of the anti-Christ, and I seek refuge with Allah from the agonies of life and death."

It is acceptable to pronounce in the tashahhud (some) supplications mentioned in akhbar.[176] Then the taslim[177] is pronounced to the right by saying: "May the peace and mercy of Allah be upon you," and likewise to the left.

Men and women follow the same procedure as far as the prayer is concerned, except that the woman keeps her limbs close to her body in both ruku and sujud positions, and sits cross legged or leans her weight to the left side, her legs and feet together to the right.

The ma'mum, on hearing the recitation of the Imam,[178] must not recite al-Hamd[179] or any other surah, [because of what (Allah) the Most Exalted said (as in the following): "And when the Qur'an is recited, listen to it and pay heed, that you may receive mercy",[180] and because of what was related by Abu Hurayra,[181] may Allah be pleased with him, from the Prophet, may the blessings and peace of Allah be upon him, who said, "Why am I being contended with in (the recitation of) the Qur'an?" And so the people stopped reciting (behind the Messenger of Allah) in the prayers in which the Prophet, -may the blessings of Allah be upon him, recited aloud].[182]

It is recommended for the ma'mum to recite al-Fatihah[183] (only) at times of the Imam's silence,[184] and also during

(the rak'ahs) that the Imam does not recite aloud;[185] (however) if that is not done, the prayer is (still) complete, because the Imam's recitation is considered as (a recitation) also for the person who follows an Imam.

The recitation must be silent during Zuhr and 'Asr prayers, but aloud during the first two rak'ahs of Maghrib and final 'Isha prayers, and also during all rak'ahs of the morning prayer.

A person should recite in the morning prayer tiwal[186] of the mufassal[187] but recite in the first rak'ah of zuhr prayer about thirty ayat[188] and (recite) in the second rak'ah a few less than that. Half of thirty ayat should be recited in (each of the first two rak'ah of) the 'Asr prayer, but the person should recite in Maghrib prayer other surahs of the mufassal, and recite in the final 'Isha prayer: "By the sun and his brightness[189]..." and so on; but whatever is recited after 'Umm Al-Kitab during all the prayers is acceptable.

Only 'Umm Al-Kitab[190] should be recited during the last two rak'ahs of Zuhr, 'Asr, and final 'Isha prayers and during the last rak'ah of Maghrib prayer.

If a man has something to cover (up) the area between the navel and the knees, that is good enough as long as he has some clothing covering his shoulders.[191] It is also valid if he has only one piece of cloth and part of it covers the shoulder.

Whosoever is unable to cover up the awrah[192] must pray

in sitting position, making appropriate motions.[193] If people are praying in congregation and they are naked, the Imam stays in the middle of the row with them and they all make appropriate motions, but their (gesture pertaining to the) sujud must be performed at a lower position than that of their ruku'. According to another report related from Abu 'Abd-Allah, -may Allah have mercy on him, it is stated that such a congregation may perform sujud on the bare ground.[194] Whosoever finds himself in water and mud must perform the prayer by making appropriate gestures.[195]

The prayer is repeated if any part of a free woman's body, except her face, is exposed. The prayer of a slave woman whose head is uncovered is acceptable.[196] It is recommended for the umm al-walad[197] to cover up her head in the prayer.[198]

Anyone who remembers that a (previous) prayer has to be performed while the person is already performing another prayer should complete the (current) prayer and then make up the (previous) prayer, and then repeat the (current) prayer if there is still some time (left). If it is feared that the time might expire (before repeating the current prayer), the person must consciously decide while performing the (current) prayer that the prayer will not be repeated and that is good enough, however, the previous obligatory prayer must be made up.[199]

The child at the age of ten should be disciplined in

order to practice ritual purity and to perform prayers.

The sujud of the Qur'an[200] is carried out at fourteen different places,[201] two of which are in Surat al-Hajj (Surah of Pilgrimage)[202]. Prostration is performed only in a state of purity. Takbir is pronounced when performing the prostration and taslim pronounced after rising from sujud position. Sujud should not be performed at times forbidden to perform voluntary prayers.[203] If the sujud of the Qur'an is carried out it is acceptable; however, no sin is committed if it is omitted.

If it is time for prayer just as dinner is ready, a person must first eat dinner. If, just at the time of prayer a person has a call of nature, he or she must first of all respond to the call of nature.[204] Allah knows best.

2.5 What Voids the Prayer if Omitted Deliberately or Out of Forgetfulness

He said: If the takbirat al-Ihram[205] or the recitation of al-Hamd is omitted, whether by an Imam (in a congregational prayer) or an individual (praying by oneself), or if the ruku is omitted or straightening up oneself after the ruku, or if the prostration is omitted, or straightening up oneself after prostration, or the final tashahhud or the pronunciation of the taslim (at the end of the prayer) the prayer is void, regardless of whether any of the above-mentioned is omitted deliberately or out of

neglect.

If, deliberately, any of the takbirs other than the takbirat al-Ihram is omitted, or the pronunciation of the tasbih[206] in the ruku' or in the sujud, or the saying "Allah hears one who praises Him", or the saying: "Our Lord, all praise is due to You (alone)", or: "O my Lord forgive me. O my Lord forgive me",207 or the pronunciation of the first tashahhud, or the invocation of (Allah's) blessings on the Prophet -may the blessings and peace of Allah be upon him- in the final tashahhud, the prayer is void.[208] However, if any of the above mentioned is omitted out of neglect, then two prostrations of neglect[209] are required. [If the Imam leads a congregational prayer, forgetting that he is in a state of sexual impurity, the Imam alone repeats the prayer.][210] Allah knows best.

2.6 Two Prostrations of Neglect

He said: Whosoever pronounces the taslim while the prayer is incomplete, must complete the prayer, then pronounce the taslim, and then carry out two prostrations of neglect, then pronounce the tashahhud followed (again) by taslim. This is in accordance with what Abu Hurayra and 'Imran bin Husayn[211] related from the Prophet -may the blessings and peace of Allah be upon him- who did the same thing.[212]

Whosoever leads a congregational prayer but is not sure

how many (rak'ahs) have been performed, must apply his mind to the problem based on his own strongest belief (of how many were complete) and then prostrate again after (pronouncing) the taslim;[213] and this is in accordance with what 'Abd-Allah bin Mas'ud related[214] from the Prophet -may the blessings and peace of Allah be upon him.

With the exception of these (two) instances[215] concerning (prostration of) neglect, all prostrations are carried out before taslim. For example, if a person (praying by oneself) is not sure how many (rak'ahs) have been performed, then the prayer must be completed based on the number of rak'ahs he or she is certain of having performed[216] (then carry out two prostrations of neglect before taslim). Also, if a person stands when he is supposed to sit, or if he sits when he is supposed to stand, or if he recites aloud when he must recite silently, or if he recites silently when he must recite aloud, or if he prays five rak'ahs or (prays) more or less than that on account of neglect, then prostration is required before (pronouncing the) taslim.

If a person forgets that two prostrations of neglect are to be carried out, and pronounces the taslim, the person must pronounce the takbir and carry out two prostrations of neglect, then pronounce the tashahhud and then taslim while this person is (still) in the mosque regardless of whether the person said anything, because the Prophet -may the

blessings and peace of Allah be upon him- prostrated after (pronouncing) the *taslim* and after he had spoken.[217]

If a person forgets to carry out four prostrations during the performance of four *rak'ah*s (of a prayer), but remembers this while in the (final) *tashahhud*, the person must perform one prostration which renders one *rak'ah* valid, then repeat (after that three *rak'ah*s, and then perform two prostrations of neglect; and this is in accordance with one[218] of two related reports. However, according to another report[219] related from Abu 'Abd-Allah -may Allah have mercy on him- he said: this man must perform the prayer again, because he was (only) playing. The *ma'mum* is not required to perform prostration of neglect except if the *Imam* has to perform it, in which case the *ma'mum* also performs it.

If a person talks deliberately or out of forgetfulness, the prayer is void, except in the case of the *Imam* specifically whose prayer is not considered void for speaking for the betterment of the prayer.[220] <If a person remembers while in the *tashahhud* that a prostration has been omitted from performing a *rak'ah*, then one *rak'ah* along with its two prostrations must be performed and then two prostrations of neglect carried out thereafter> Allah knows best.

2.7 Praying with Impurity, Etc.

He said: If (the prayer is performed while) the

person's garment is unclean or the place of worship is unclean, the prayer must be repeated. Similarly, if the prayer is performed at a graveyard or a privy <or in a bathroom> or a resting place of the camels near a water hole, the prayer must be repeated.[221]

If the prayer is performed while there is any impurity on the garment whether the impurity is (only) a small quantity, the prayer must be repeated, unless it is a little blood or pus which are not detestable to the heart. If the (exact) spot of the impurity on a garment is not known, the garment must be subjected to washing until it is certain that the impurity has been washed out.

Whatever comes out of man or animal whose meat is unlawful to eat, urine and the like for example, is impure, unless it is the urine of a male child[222] who is not yet able to eat food, in which case (the area) is splattered with water. Semen is considered clean;[223] but according to another report[224] related from Abu 'Abd-Allah -may Allah have mercy on him-, it is treated like blood.

A bucket of water is enough to purify the surface of the ground on which urine has been discharged.

If the Imam leads a congregational prayer forgetting that he is in a state of sexual impurity, the Imam alone repeats (the prayer).[225] Allah knows best.

2.8 Times at Which Prayers are Forbidden

He said: A person can make up the missed obligatory prayers, perform the two rak'ahs of circumambulating the ka'bah,[226] and also pray over the deceased (at the forbidden times). Moreover, a person can repeat, behind the Imam, the obligatory prayer that has already been performed while the person is still in the mosque and the iqamah is pronounced, and (this can be repeated) at any forbidden times[227] of prayer, namely: after 'Asr prayer until sunset, and after Fajr prayer until sunrise. However, the performance of any voluntary prayer at these times must not be initiated.

Voluntary prayers are performed with a break for taslim after every two rak'ahs. It is acceptable if a person performs voluntary prayer of four straight rak'ahs during the day.[228]

It is permissible to perform voluntary prayer in a sitting position, but the standing position is represented by sitting cross-legged, and the legs folded in the ruku' and sujud postures. The sick may perform the prayer sitting if it is felt that standing might aggravate the sickness. If a person is unable to pray sitting, he may pray while lying down.

Witr[229] prayer is performed one rak'ah, and qunut[230] carried out during the prayer the witr prayer is separated from prayer prior to it.[231]

Twenty voluntary rak'ahs[232] are performed each night of the month of Ramadan. Allah knows best.

2.9 Imamah (Function of the Prayer Leader)

He said: The best one of the congregation in the recitation of the Qur'an leads the prayer. If the followers are as perfect as the Imam in the recitation of the Qur'an, the most learned of them in the fiqh[233] leads the prayer. If the followers are as perfect as the Imam as far as fiqh is concerned, the oldest of them leads. [If they are all in the same age, the most honorable of them leads. If they are all on the same level of honor, the earliest of them in terms of the hijrah[234] leads the prayer.]

Whosoever prays behind a person who advocates bid'ah[235] or a person known for drunkenness, must repeat the prayer.

It is permissible for the slave or the blind to lead the prayer. If an illiterate leads both an illiterate and a literate in prayer, the literate only must repeat the prayer.

If a person prays behind a polytheist, or a man prays behind a woman or behind hermaphrodite of indeterminate sex, the prayer must be repeated.

A woman leading women in prayer stands with them in the middle of the row.

The master of the house has more rights to lead the prayer (in his home) unless among the congregation is one who has an authority.

Those who stand further up the mosque or outside of the mosque may follow the Imam in the prayer as long as the rows

stay in contact (with one another), but the Imam should not stand any level above that of the ma'mum.[236]

Whosoever prays alone behind the (regular) row, or stands on the left of the Imam on the same row, repeats the prayer.[237]

If the Imam of the community leads the prayer from a sitting position, those behind him must also pray in the sitting position. If the Imam starts to lead the prayer in the standing position but becomes weak afterwards and so sits, the followers behind complete their prayers in the standing position.

If the Imam is found in the ruku' position and is followed by a person who joins in the ruku' behind the (regular) row, and then walks forward to join the (regular) row, and is not aware of what the Prophet -may the blessings and peace of Allah be upon him- said to Abu Bakrah[238] "May Allah increase your aspiration, but never do it again", then what should be said to this person is: "Never do it again" but his prayer is still valid. However, if after such a warning the person repeats this, then his prayer is no longer valid. Ahmad -may Allah have mercy on him- mentions this in the report of Abu Talib.[239]

The sutrah[240] of the Imam is considered a sutrah also for those following from behind. Whosoever walks in (the immediate) front of the worshipper, must be held back. Only a jet-black dog will invalidate a person's prayer[241] (if it

walks past in front of the worshipper). Allah knows best.

2.10 The Prayer of a Traveller

He said: If the distance of a journey is sixteen parasangs[242] or forty-eight Hashimi[243] miles, it is permissible to shorten the prayer after a person has travelled past the neighborhood of a small town provided the journey is for the purpose of fulfilling an obligation or for a lawful means.

If the intention to shorten the prayer is not asserted at the beginning of the prayer, it is not accepted (then) to shorten the prayer.[244] Morning and sunset prayers are never shortened. <There are no differences of opinion (Khilaf) among scholars regarding this case>. It is permissible for the traveller to complete[245] the prayers or to shorten them, just as the traveller is also permitted either to fast or to break the fast. Nevertheless, Abu 'Abd-Allah prefers that the traveller shortens the prayer or breaks the fast.

When it is time of Zuhr prayer just as the traveller is ready to set out for the journey, the Zuhr prayer must be performed before leaving, and when it is time for 'Asr prayer, 'Asr must be performed; likewise Maghrib and final 'Isha prayers. However, it is permissible if a person is travelling (before it is time for the prayer) to delay the first prayer to the time of the second prayer.

If a prayer is not performed due to forgetfulness,

while the person is not travelling, but remembers it during a journey, or if a prayer is not performed due to forgetfulness while the person is on a journey but remembers it when not travelling, then the prayer is made up in each of the two cases as in a state of non-travelling.

If a person while travelling, follows a non-traveller in prayer, then the prayer is completed (as if he were not travelling). If a traveller and a non-traveller both pray behind a traveller, then (only) the non-traveller must complete the prayer after the _Imam_ pronounces the _taslim_. If a traveller intends to stay in a town for more than a twenty-one prayer time span, then the prayers are completed (as if a non-traveller).[246] However, if a person travelling says (based on his intention): 'I am leaving today' or 'I am leaving tomorrow', the prayers are shortened, even if the traveller stays for a month. Allah knows best.

2.11 Jumu'ah Prayer[247]

He said: When the sun begins to decline (in the sky) on Friday, the Imam mounts on the pulpit. When he faces the congregation he greets them by pronouncing the taslim, and they return the greetings to him, then he sits, and then the Mu'adhdhins[248] begin to pronounce the call to prayer. This call[249] prohibits the believers (from that time until the prayer is over) from continuing their trading, and also obligates them to hasten (unto the remembrance of Allah),[250] unless the person lives far away (from the place of the Jumu'ah prayer), in such case he must leave at a possible time for him to reach the place of congregational prayer. When the Adhan is over, the Imam stands to deliver the sermon to the congregation. He begins by praising Allah and extolling Him, and also by invoking blessings on the Prophet -may the blessings and peace of Allah be upon him. [Then he quotes verses from the Qur'an and preaches] and then sits. He stands up again (after a little while) and praises Allah and extols Him, and also invokes blessings on the Prophet -may the blessings and peace of Allah be upon him- and quotes from Qur'an (and Hadith) and preaches. Then he may pray for anyone he wants, [and then the iqamah is pronounced] (to initiate the prayer). So, the Imam descends from the pulpit and leads the congregation for the Jumu'ah prayer which consists of two rak'ahs. He recites during

each rak'ah: al-Hamd and a surah, [and recites them aloud].[251]

Whosoever achieves one rak'ah, including the two sujuds behind the Imam, may complete another rak'ah (for himself) and has thus fulfilled the Jumu'ah prayer. However, if less than a rak'ah is attained behind the Imam, the person stands (after that) to complete four rak'ahs as Zuhr prayer if the prayer is joined (only) with the intention of (completing) Zuhr prayer.[252]

If the congregation, by the time of 'Asr, has performed one rak'ah, another rak'ah must be completed, and that is good enough for the congregation to be considered as having achieved the Jumu'ah prayer.[253]

Whosoever enters (the mosque) while the Imam is delivering the sermon, should not sit until he performs two rak'ahs which should be brief.[254]

If the population of a village does not comprise forty[255] men who are in full possession of their mental faculties, Jumu'ah prayer is not obligatory on them. If Jumu'ah prayer is performed (without meeting such a condition) the prayer is repeated (four rak'ahs) as Zuhr. If a town is so large that it stands in need of Jami's,[256] it is permissible to perform Jumu'ah prayers in all of them.[257]

Jumu'ah prayer is not obligatory on a traveller, or a slave[258] or a woman. However, if they attend it, it will be accepted (from them). <That is, Jumu'ah prayer will be

accepted from them in lieu of Zuhr and no differences of opinion are known to us regarding this matter>

[Two reports concerning the slave are related from Abu 'Abd-Allah -may Allah have mercy on him- one of which is that Jumu'ah prayer is obligatory on the slave, but the other report states that it is not obligatory.][259]

If any person, on whom it is obligatory to attend Jumu'ah prayer, performs Zuhr prayer on Friday before the Imam has finished leading the Jumu'ah prayer, he must repeat the Zuhr prayer after the Jumu'ah prayer is over.[260]

It is recommended that any person intending to attend the Jumu'ah prayer take a bath,[261] wear two clean pieces of cloth and perfume oneself.

It is valid if the Jumu'ah prayer is performed <before noon> at the sixth hour.[262]

Jumu'ah prayer is obligatory on any one who lives a distance of one parasang from the Jami'.[263] Allah knows best.

2.12. The Two 'Id[264] Prayer

He said: Takbir is pronounced aloud during the nights of the two 'Ids, with more emphasis given to it the night of 'Id al-Fitr[265] because of what (Allah) the Most Exalted said: "and (He desires) that you should complete the period, and that you should magnify Allah for having guided you, and that possibly you may be thankful".[266] When (the Muslims)

wake up in the morning of the ʿId, they should take their bath, and eat (something) if it is the morning of the feast of breaking the fast of Ramadan,[267] and then set out for the place of prayer while pronouncing the takbir. When it is time for the prayer, the Imam advances to lead the congregation with two rakʿahs, without the adhan or the iqamah pronounced. The Imam recites in each of the two rakʿahs: al-hamd lillah and another surah and recites them aloud.[268] During the first rakʿah seven takbirs are pronounced which include the opening takbir. The hands are raised with every takbir[269] and the opening supplication pronounced immediately after the first takbir. The Imam praises Allah, extols Him, and invokes blessings on the Prophet -may the blessings and peace of Allah be upon him- between every two takbirs. If the Imam likes, the following may be said: "Allah is supremely great, all praise is due to Allah many times, glorified is Allah, morning and evening, and may the blessings and peace of Allah be upon the Prophet". If the Imam likes, other supplications may be pronounced.

In the second rakʿah, five takbirs are pronounced which exclude the takbir that is pronounced, to rise from sujud, and the hands are raised with every takbir.

After pronouncing the taslim, the Imam stands to deliver two sermons, between which he sits down. If the sermon is for the ʿId al-Fitr prayer, the congregation is

encouraged to give sadaqah,[270] and (the quantity or amount of sadaqah) to be given out is explained to the congregation. If the sermon is for the 'Id al-Adha[271] prayer, the Imam encourages them to sacrifice (animals), and explains to them what can be used for sacrifice. No voluntary prayers are performed before or after 'Id prayers.[272] If a certain path is taken to attend the 'Id prayer, a different way should be taken for the return.

If the 'Id prayer is missed, four rak'aks may be performed voluntarily[273] [and the taslim pronounced at the end of the prayer].[274] If the person performing the prayer likes, the four rak'ahs may be interrupted with the pronunciation of the taslim at the end of every two rak'ahs.[275]

On the day of Arafah,[276] the takbir is pronounced beginning from the Fajr prayer, and it is pronounced at the end of every obligatory prayer performed congregationally.

According to another report[277] related from Abu 'Abd-Allah -may Allah have mercy on him- the takbir is pronounced after performing obligatory prayers even if praying by oneself until 'Asr prayer is performed on the last day of the days of tashriq,[278] then it is brought to an end. Allah knows best.

2.13 Prayer (in the state) of Alert[279]

He said: If the prayer (in the state) of alert is to be

performed while being away (from home) and in confrontation with the enemy, the Imam leads a group to perform one rak'ah, [and then remains standing] - while the group continues to complete for itself another rak'ah reciting al-hamd lillah and another surah, and then leaves to take guard - until the other group facing the enemy joins the prayer and prays with the Imam one rak'ah and then completes for itself another rak'ah reciting al-hamd lillah and another surah; but the Imam prolongs the tashahhud in order for the (second) group to be able to complete the tashahhud before pronouncing the taslim with them.

[If it is the maghrib prayer, the Imam prays with the first group two rak'ahs and then the group completes for itself another rak'ah in which al-hamd lillah and another surah are recited.]

If the prayer (in the state) of alert is to be performed while not travelling,[280] the Imam prays with each (of the two groups) two rak'ahs,[281] and the first group completes for itself the prayer by reciting (only) al-hamd lillah in each of the (remaining) rak'ahs, but the other group completes it by reciting al-hamd lillah and another surah in each of the (remaining) rak'ahs.

However, in the case of maghrib prayer, the Imam prays with the first group one rak'ah and the group completes for itself two rak'ahs reciting in them al-hamd lillah then the Imam prays with the other group one rak'ah and this group

completes for itself two rak'ahs reciting in them al-hamd lillah and another surah.[282]

If in severe danger while in a state of armed combat, the prayer is performed walking or riding and turning towards the qiblah or any direction and making appropriate motions. The congregation begins with takbirat al-Ihram, while turning towards the qiblah if possible, otherwise turns towards any other direction.[283]

If the congregation comes to enjoy safety while the prayer is being performed (in the state of alert) then the prayer is completed as in a state of safety. On the other hand, if the prayer is started in a state of safety, and (suddenly) the situation changes into a state of severe danger, the prayer is completed as in a state of alert.[284] Allah knows best.

2.14 Prayer During an Eclipse

He said: When there is solar or lunar eclipse, people should take refuge in prayer - if they like - in congregation or individually [without pronouncing the adhan or iqamah].[285] The Imam recites in the first rak'ah 'umm al-Kitab and a long surah, and recites them aloud, then performs the ruku' and remains for a long time in the ruku' position, then rises to recite (al-Fatihah and other long surah) and remains for a long time in the standing position, but not as long as in the first standing position. Then the

Imam performs the *ruku'* and remains for a long time in the *ruku'* position but not as long as in the first *ruku'* position, [then rises from the *ruku'* position] and performs two long *sujuds*. After rising to the standing position, the *Imam* follows the procedure (to the end), and that completes (in all) four *ruku's* and four *sujuds*; then the *tashahhud* is pronounced followed by *taslim*.

If the eclipse occurs at a time not permissible[286] for performing prayers, then *tasbih*[287] is pronounced in place of the prayer. <This apparently is the position of the school, because voluntary prayer cannot be performed at times forbidden to pray whether or not there is a ground for such a prayer>. Allah knows best.

3. Prayer for Rain

3.1

He said: If drought is experienced and there is no drop of rain, people may go out (to the place of prayer) with the *Imam*, and the manner in which they leave (to the place of prayer) must be such as according to what is related from the Prophet -may the blessings and peace of Allah be upon him- "that whenever he intended to pray for rain, he would leave humbly behaving with great devotion, displaying humility, meekly and submissively".[288] The *Imam* prays two *rak'ahs*289 with the congregation, delivers a sermon and

faces the qiblah[290] and then turns the right side of his cloak to the left and the left side to the right, and the congregation does the same. Then the Imam as well as the congregation pronounce supplications and implore forgiveness[291] many times in their supplications. If they are blessed with rain (all well and good). Otherwise, the prayer is repeated on the second and third days. The dhimmis292 shall not be refused if they desire to participate with the Muslims (in praying for rain), however they must isolate themselves from the Muslims.[293] Allah knows best.

3.2 Legal Consequence of the Case of One Who Omits Praying

He said: Whosoever omits praying while being mature and in full possession of the mental faculties, whether the prayer is renounced or not, is urged for three days at the time of every prayer to perform it. If he does pray, all well and good. Otherwise, he shall be put to death.[294] Allah knows best.

4. Jana'iz (Funeral Procession)

4.1

He said: A person whose death is ascertained is turned towards the qiblah, the eyes closed, the jaws tied up so that the jaw bones do not become loose, and a mirror[295] or

something else (flat and heavy) is placed on the stomach so as to prevent the stomach from bloating. Before the deceased is washed, the (part between the) navel and the knee is covered.

It is recommended not to wash the deceased under the (open) sky; and at the time of the washing, only the person assisting in the washing is allowed to attend the deceased. The joints (of the deceased) are relaxed if that is convenient for the washer otherwise they are left as they are. The washer wraps the hands with a (piece of) cloth and cleanses the impurities from the deceased, presses the stomach gently (to expel the air) and then performs wudu' for the deceased, - similar to the wudu' performed by oneself if prayer is intended. However, water is not put in to the mouth or the nose of the deceased.[296] If there is any dirt in them, it is cleaned out with a piece of cloth. Water is poured over the body beginning with the right side, and the deceased turned to either side so that the water spreads over to the other parts of the body. For every washing, the water must contain some lotus. The lotus is pounded and the (resulting) foam used to wash the head and beard of the deceased. In all cases, the deceased is treated with gentleness. Warm water, saltwort and vinegar are used if needed. For the third washing, the water must contain camphor and some lotus, but not entire lotus. If anything issues from the body of the deceased (afterwards),

the deceased is rewashed up to five times and if any more comes out then (wash) again up to seven times. If anything issues forth again, then that part of the body is dressed with cotton, but if it fails to adhere then pure clay is used (to absorb the ooze). The deceased is then wiped dry with a piece of cloth; the shrouds perfumed with incense and the deceased, shrouded in three white cloths; and then wrapped well in them, and perfume applied in between (the sheets).

If the deceased is shrouded in a wrap, a shirt and a loin-cloth, the loin-cloth is worn next to the skin and the shirt (left) unbuttoned.[297] The joints are rubbed with fragrant powder, and the parts applied in the performance of sujud rubbed with perfume and also the moveable parts (of the body). The deceased is treated like the bridegroom. Camphor is not put in the eyes, and the family is not refused if they express the desire to view the deceased.

If a little quantity of anything issued from the deceased after having been already shrouded, the washing is not repeated. The deceased is carried away (in that condition).

The woman is shrouded in five pieces of cloth: a shirt, a loin-cloth, a wrap and a veil, and a fifth piece of cloth is used to bind the thighs together. The hair is braided into three plaits and let down the back.[298]

It is recommended to hasten the deceased (to burial),

and it is preferable to walk in the front (of the body).[299]

Al-Tarbi[300] is (also recommended, and that is) to place (the front left side of the bier) on one's right shoulder and moving back to the side of the leg and then (place the front right side of the bier) on the left shoulder and moving back to the side of the leg.

The most entitled to lead the prayer over the deceased is the person recommended by will to lead, then the amir,[301] then the father of the deceased, however high in ascent, then the son, however low in descent, then the closest paternal relative.

To perform the prayer over the deceased, the first takbir is pronounced then followed by reciting al-hamd lillah,[302] then the second takbir is pronounced and followed by invoking the blessings on the Prophet -may the blessings and peace of Allah be upon him- just as it is invoked in the, tashahhud and then the third takbir is pronounced and followed by pronouncing supplications for oneself, one's parents, (all) Muslims and also on behalf of the deceased.

The following may be said if it is desired: ["O Allah, forgive those of us who are still living and those who have died, and those of us who are present and those who are absent, our minors and elders, males and females, verily you are aware of our final destiny and place of rest, verily you are able to do all things. O Allah, let the one whom you keep alive from among us live the life according to Islam,

and let the one whom you cause to die from among us die as a believer. O Allah, the deceased is your male servant, the son of your female servant. He will stay with you, and you are the best One to stay with. We only know of good things (about him). O Allah, if he is good, increase his goodness, but if he is bad, disregard his badness. O Allah, do not deprive us of his reward and never tempt us after him."][303]

The fourth takbir is then pronounced and the Imam remains standing for a little while. The hands are raised with every takbir.[304] Finally, one taslim is pronounced to the right.[305]

If any of the takbirs are missed, they may be made up successively. However, if the taslim is pronounced behind the Imam without making up the missed takbirs, there is no sin committed.[306]

The deceased is laid down into the grave through the foot of the grave if that is convenient for the persons laying down the deceased.

The woman is laid down into the grave screened by a sheet of cloth. The mahram[307] lays her down, otherwise women (will do so). If women are not available, she is laid down by old men.[308]

The shroud is not cut in the grave, but (all) knots should be untied. Baked brick, wood or anything touched by fire are not put into the grave.[309]

If the funeral prayer is missed, it may be performed

over the grave of the deceased. If the takbir is pronounced five times by the Imam, the ma'mum follows up and pronounces the takbir likewise.[310]

The Imam (in leading the funeral prayer) stands toward the chest of the deceased if it is a male; but if the deceased is female, the Imam stands facing the middle.[311] The funeral prayer is not performed over the grave of the deceased if one month has passed since death.[312]

If the heirs of the deceased are unwilling to spend much as far as the shroud is concerned, (then it should be mentioned that) thirty dirhams[313] worth of shroud is good enough. If the deceased is a wealthy person, fifty dirhams worth is appropriate.

The miscarried fetus is washed and prayed over if delivered four months (into term).[314] If it is unclear as to whether the miscarried fetus is a male or female, a name suitable for both male and female is chosen for the fetus.

A woman may wash her husband. It is acceptable, if necessary, for the man to wash his wife.[315]

The martyr who dies on the battle field is not washed or prayed over, and is buried in the same two pieces of clothing.[316] Leather material or weapons found on the martyr are removed. The martyr who is carried while still holding breath of life is washed and prayed over.

The muhrim[317] is washed with water and lotus, not rubbed with perfume,and is shrouded in the same two pieces of

clothing (worn when he died). Neither the head nor the legs are covered.[318] Any part fallen from the body of the deceased is washed and included in the shrouds. If the mustache is long, it is trimmed and (the trimmed hairs) included with the deceased.[319]

It is recommended to console the family of the deceased. It is not reprehensible to cry as long as it is not accompanied by wailing and lamentation (for the deceased).

It is commendable to prepare and send food to the family of the deceased. The bereaved is not to prepare food to feed the people (offering their condolences).

If a woman dies while child movement is felt in the womb, the stomach is not cut open.[320] Midwives must rush upon to deliver the baby.

When the funeral prayer is to be performed at the time of _fajr_ prayer, the funeral prayer is performed first. When the funeral prayer is to be performed at the time of _maghrib_ prayer, _maghrib_ prayer is performed first.

The _Imam_ does not pray over a booty-thief or a person who has taken his own life.[321]

If the funeral prayer is performed over a man, a woman and a child, the man is laid in the immediate front of the _Imam_, the woman behind the man and the child behind both of them.[322]

If all three are to be buried in one grave, the man is

laid down directly facing the qiblah, the woman behind him and the child behind both of them, but each of the three is separated from one another by a dividing wall of soil.

If a Christian woman who is pregnant by a Muslim dies, she is buried between the Muslim graveyard and the Christian graveyard.[323]

A person entering the graveyard, takes off his shoes. Men are allowed to visit the graveyard. However, it is reprehensible for women to do so.[324] Allah knows best.

5. Zakah (Alms)

5.1

He said: Zakah is not incumbent upon a person who owns fewer than five freely-grazing camels. If five camels are owned which are allowed to graze freely for most part of the year,[326] it is obligatory to offer a sheep as zakah. If ten camels are owned, two sheep are offered. If fifteen camels are owned, three sheep are offered. If twenty camels are owned, four sheep are offered. If twenty-five to thirty-five camels are owned, a female camel in its second year is offered. [If such a camel is not available from among the camels, a male camel in its third year is offered. If thirty-six to forty-five camels are owned, one female camel in its third year is offered. If forty-six to sixty camels are owned, one female camel in its fourth year that

is a female camel ready for mating with a stud camel, is offered. If sixty-one to seventy-five camels are owned, one female camel in its fifth year is offered. If seventy-six to ninety camels are owned, two female camels in their third year are offered. If ninety-one to one hundred and twenty camels are owned, two female camels in their fourth year, ready for mating with a stud camel, are offered. The above (nisabs and rates on camels) are unanimously agreed upon.][327] If more than one hundred and twenty camels are owned, one female camel in its third year is offered out of every forty camels, and one female camel in its fourth year is offered out of every fifty camels.[328] If a female camel in its third year is required for zakah when only a female camel in its fourth year is available, then what is available is accepted and the excess compensated with two sheep or twenty dirhams returned to the person. If a female camel in its fourth year is required for zakah when only a female camel in its third year is available, then what is available is offered in addition to two sheep or twenty dirhams.[329] Allah knows best.

5.2 Zakah on Cows

He said: Zakah is not obligatory if fewer than thirty freely-grazing cows are owned. If thirty to thirty-nine cows which have been freely grazed most part of the year are owned, a calf in its second year is offered as zakah. If

forty to fifty-nine cows are owned, a calf in its third year is offered. If sixty to sixty-nine cows are owned, two calves in their second year are offered. If seventy cows are owned, a calf in its second year and a calf in its third year are offered. If more (than seventy cows) are owned, then for every thirty cows, a calf in its second year is offered, and on every forty cows, a calf in its third year is offered.[330]

Buffaloes are treated the same as cows (in terms of zakah).[331] Allah knows best.

5.3 Zakah on Sheep (and goats)

He said: Zakah is not obligatory if fewer than forty freely grazing sheep are owned. [If forty to one hundred and twenty sheep which have been freely grazed for most part of the year are owned, a sheep is offered as zakah. If one hundred and twenty-one to two hundred sheep are owned, two sheep are offered. If two hundred and one to three hundred sheep are owned, three sheep are offered.][332] If more than three hundred sheep are owned, then on every one hundred sheep, a sheep is offered.[333] It is not acceptable to offer for zakah a billy goat, a decrepit or defective sheep (or goat),[334] a sheep having recently given birth or in labor, or a barren sheep. Lambs are counted towards the number of sheep required to pay zakah, except that they are not accepted if offered as zakah.

Out of goats a one year old goat is accepted, and out of sheep, a six-month old sheep is accepted.[335] If twenty sheep and twenty goats are owned, then what is worth half the price of a sheep and half the price of a goat is offered from one of the two kinds (of the available animals).

If a group of people collectively own five camels or thirty cows or forty sheep, while having a common grazing land, pasture, night shelter, dairy and breeding ground, zakah is obligatory on them collectively,[336] and any of them may claim his due accordingly from the other partners (if the zakah is paid by him alone on their behalf.

However, if they are all partners in other than pasturing cattle, then each of them individually is responsible for the payment of zakah provided what is owned by each individual is liable for payment of zakah.

Zakah is only obligatory on a free Muslim. The wali[337] (guardian) pays it on behalf of the child and the insane.[338] The slave master pays zakah for what is in the hand of the slave, because whatever is in the hand of the slave belongs to the master.[339] Zakah is not obligatory on the mukatab.[340] [If the mukatab is unable to fulfill (the contract for gaining freedom), the master takes into possession what is owned by the mukatab, and after a year has passed by, if zakah must be paid on it, the master pays it. However, if the contract has been fulfilled but there is still some property in the possession of the mukatab, and on which

zakah is to be paid then a complete year must pass by.][341] (before zakah is paid on it). Zakah is not paid on wealth until a complete year passes by.[342]

It is not permissible to pay zakah in advance.[343] However, if it is paid in advance to a person deserving it, and the donor dies before a complete year passes by; or if a complete year passes by and the recipient of the zakah is no longer in need of it or of any other zakah,[344] it is valid.

It is not acceptable to pay zakah without intention formed (for it), unless the Imam takes it by force (before the intention could be formed).[345]

Parents, however high in ascent, children however low in descent, husband[346] or wife, a disbeliever or a slave, are not entitled to zakah unless they are zakah agents in which case, they are paid for their work from zakah.[347] Furthermore, Banu Hashim,[348] the mawali[349] of Banu Hashim, a financially able person - that is: a person who owns fifty dirhams or its equivalent in gold - are not entitled to zakah.[350] Zakah is only distributed among the eight groups that are mentioned by Allah, the Almighty and Most Exalted,[351] except that if a man undertakes to distribute it himself, then the collector is not included among the recipients of zakah. If the whole zakah is offered to only one (of the eight recipients of zakah) it is acceptable provided it does not turn the recipient into a rich person.[352]

Zakah is not transferred from one city to another where the distance between them allows the shortening of the prayer.[353]

If cattle is exchanged for another of the same kind before a whole year passes by, is paid on it when a whole year has passed by since the time the original cattle was owned.[354]

Similarly, if two hundred dirhams are exchanged for twenty dinars, or if twenty dinars are exchanged for two hundred dirhams, payment of zakah is not halted because of the exchange. If in order to avoid payment of zakah one head of cattle is exchanged for dirhams before a whole year passes by zakah is still obligatory.[355]

Zakah is binding on a person if a whole year passes by, even if the wealth becomes used up later on whether through squandering or not. If cattle is deposited as security and then a year passes by, zakah is paid with cattle if money is not available with which to pay the zakah; and any cattle remaining after that is still kept as security.

5.4 Zakah on Fruits

He said: Anything brought forth from the earth by Allah the Almighty and Most Exalted, among that which dries and maintains a state or condition by which it can be measured amounting to five wusuq[356] or more, and if it has been watered by rain or running water, ushr[357] of the produce

must be given out as zakah.

If water-wheels, sprinklers and that which involves expenses, are used for irrigating (the farm or garden), then it is obligatory to offer one-twentieth of the produce zakah.

A wusuq is equivalent to sixty sa'ṣ, and a sa' is equivalent to five and one-third Iraqi ritl.

There are two types of land: Land taken peacefully and a land taken by force.[358] If it is a land taken peacefully sadaqah[359] is paid on it (if in the possession of a Muslim), but if it is a land taken by force (of arms), then kharaj[360] is paid on it (from the yield) and zakah paid on what remains of it provided it measures five wusuqs and it is owned by a Muslim.

Wheat is combined with barley and zakah paid provided the resultant combination measures five wusuqs. Similarly, legumes are treated the same, and also gold and silver.

[According to another report[361] from Abu 'Abd-Allah -may Allah have mercy on him: It is not allowed to combine two things and that, zakah is paid on each kind separately provided it measures the minimum quantity liable for payment of zakah.][362] Allah knows best.

5.5 Zakah on Gold and Silver

He said: Zakah is not paid on what is less than two hundred dirhams (of silver) unless a person owns (besides

it) gold or trade goods which can complete (the nisab).

Similarly, zakah is not paid on what is less than twenty mithqals[363] (of gold). If (the minimum amount of twenty dinars of gold or two hundred dirhams of silver) is attained, one-fortieth of it is paid as zakah. Also, zakah is not paid on the little excess (over the nisab).[364]

Zakah is not paid on women's jewelry used for wearing or loaning to others.[365] Also, it is not paid on the ornament of men's sword or girdle or ring. It is a sin to use golden or silver vessel, nevertheless, zakah may be paid on it.

Hidden treasure, namely the buried treasure of jahiliyyah,[366] whether in small or great quantity is liable for payment of one-fifth as zakah to those entitled to it[367] and whatever remains (after the payment is made) is lawful to keep. Zakah is obligatory as soon as the following are extracted from the mines: twenty mithqals of gold or two hundred dirhams of silver or its equivalent in lead or mercury or brass and so on from mineral resources of the earth.[368] Allah knows best.

5.6 Zakah on Trade Goods

He said: Trade goods are assessed after a complete year has passed by, then zakah paid on them.[369]

If only a commercial commodity is owned the value of which is less than two hundred dirhams, zakah is not

obligatory until a year passes by from the day it becomes worth two hundred dirhams.[370]

When a year passes by a commodity, it is assessed at the time to benefit the needy regardless of the price for which it has been purchased in gold or silver.[371] If a commodity is purchased for investment, then intended for personal use, then intended again for investment, zakah is not obligatory until the commodity is sold and a whole year has passed by the amount (for which it is sold).[372]

If the minimum amount of wealth liable for zakah is acquired, then invested and profit made from it, zakah is paid both on the original wealth and the profit made, after a year passes by.[373] Allah knows best.

5.7 Zakah (in a state) of Debt and on Dowry

He said: If a person owns two hundred dirhams (of silver) while in debt to others, zakah is no longer obligatory. If some wealth is owed to a wealthy person, payment of zakah is not obligatory until what is owed is claimed and then the outstanding zakah is paid.[374] According to one of the two reports from Abu 'Abd-Allah -may Allah have mercy on him: If a person's wealth is taken away by force, zakah is paid on it if it is recovered.[375]

According to the other report,[376] he said: 'This is not like a debt which when is paid is subject to outstanding zakah when it is recovered. However, I prefer the payment

of zakah.

If found wealth becomes lawfully part of the finder's wealth after a complete year (of public announcement) another whole year must pass before zakah is paid on it; and if it is claimed (later on) by the actual owner, zakah is paid on it by the owner for the year in which its finder could not lawfully own it.

A woman who receives her dowry (at a later time) must pay zakah on it for the past (years of her marriage without it).

If cattle are sold with a guarantee of the right of withdrawal, and the cattle are returned before the right of withdrawal is declared void, a year must pass by (before zakah is paid on the cattle) regardless of whether the right of withdrawal is granted to the vendor or to the purchaser, because this transaction is only considered as a renewal of ownership.[377] Allah knows best.

5.8 Zakah of Breaking the Fast (Zakat al-Fitr)

He said: To break the fast (for the whole month of Ramadan) a sa‛[378] equivalent to the sa‛ of the Prophet -may the blessings and peace of Allah be upon him- must be paid by every Muslim, freed or slave, male or female. A Sa‛ is equivalent to five and one-third ritls[379] of every eatable seed or fruit.

If a Sa‛ of cottage cheese is offered as zakah to the

bedouins, it is acceptable provided it is part of their food.[380] It is preferable to Abu 'Abd-Allah -may Allah have mercy on him- to offer dates (for zakat al-Fitr).[381]

If it is possible to offer dates or barley or wheat or raisins or cottage cheese, then it is not acceptable to offer otherwise.[382] It is not acceptable to offer the equivalent value (in cash) of any of the above mentioned.[383] zakat al-Fitr is paid when leaving to the place of prayer. It is accepted if paid in advance a day or two before the day of the 'Id prayer.[384]

It must be paid on behalf of oneself and on behalf of a person's family[385] if excess of food is owned on the day and night of 'Id.[386]

It is not obligatory to pay zakah on behalf of a person's mukatab.[387] [It is incumbent upon the mukatab to pay the zakah for himself.][388]

If a slave is owned by a group of people, one sa' is paid by each person (on behalf of the slave).[389]

According to a report from Abu 'Abd-Allah -may Allah have mercy on him: one sa' is paid by all of them.[390]

A person for whom it is lawful to receive zakah on wealth is also entitled to zakat al-Fitr.[391]

It is lawful to offer to a group of people what is obligatory on one person, and it is also lawful to offer to one person what is obligatory on a group of people.[392] It is good to pay zakah on behalf of a fetus.[393] Uthman bin

Affan[394] -may Allah be pleased with him- used to pay zakah on behalf of the fetus.

If a person has enough to pay for zakat al-Fitr, but owes a similar amount, he or she must pay the zakat al-Fitr, unless there is a claimant in which case the debt must be paid, and the zakah is not required. Allah knows best.

6. Fasting

6.1

He said: When it is the twenty-ninth day of Sha'ban[395] the crescent (of the month of Ramadan) is looked for (at night) and if the sky is clear there is no fasting the next day. If clouds or dust prevents from sighting the crescent, it is obligatory to fast (the next day), and the fasting on that day is valid if it turns out to be part of the month of Ramadan.[396]

It is not permissible to observe an obligatory fast until intention is formed during any part of the night (preceding the day of fasting).[397] If after intention is formed during the night, he loses his consciousness before the appearance of the dawn and does not regain it until sunset, the fasting on that day is not acceptable.[398] If intention is formed during the day for a voluntary fast, and nothing is eaten (the whole of that day), the fast is accepted.[399]

If a distance is travelled for which prayer is shortened, the fast is broken only after leaving behind the neighboring houses in the area.

If, deliberately and while bearing the fast in mind, anything is eaten or drunk, or if a person is cupped,[400] or something is taken in through the nose[401] or drawn from anywhere into the belly, or if a person kisses and as a result, ejaculates semen or prostate[402] fluid, or gazes at someone repeatedly to the point of ejaculation,[403] the fast is performed again without carrying out kaffarah[404] if it is an obligatory fast.

However, if any of the above mentioned is committed out of forgetfulness, [there is no need to seek (any legal opinion)] for the fast is (still) valid, and need not be performed again.[405]

If vomit is expelled (while fasting), the fast is performed again, but if a person is overcome by vomit, then the fast is still valid.

If a person apostatizes from (the religion of) Islam (while fasting), the fast is void. The fast is also void if a person intends to break the fast (while fasting).

If sexual intercourse, deliberately or out of forgetfulness occurs in the vagina, whether or not semen is discharged, or if it occurs in other than the vagina and semen is discharged,[406] the fast is performed again and kaffarah is also required[407] if (the violation) is committed

in the month of Ramadan.

Kaffarah is the emancipation of a Muslim slave. If this is not possible, one must fast two consecutive months, and if this is (still) not possible, then sixty needy persons are fed.[408] A mudd[409] of wheat or half a sa' of dates or barley is offered to each needy person.[410]

If sexual intercourse occurs and the kaffarah is not carried out before a second sexual conjoining, then one kaffarah is good enough.[411] However, if the kaffarah is carried out (from the first sexual intercourse) and then a second sexual intercourse occurs, a second kaffarah is required.[412]

If anything is eaten when it is thought that the dawn has not appeared, while (in actual fact) it has appeared; or if the fast is broken when it is thought that the sun has set while it has not set, the fast is performed again.

It is permissible for a person who has had sexual intercourse at night to delay the ghusl until the appearance of the dawn and continue with the fasting. Similarly, a fasting woman whose menstrual bleeding stops before the (appearance of the) dawn may delay the ghusl until the morning, if intention to fast is formed before the appearance of the dawn. She must perform the ghusl when she gets up in the morning (before performing the fajr prayer).

The pregnant woman may break the fast if she fears for her fetus; and the nursing woman may also break the fast if

she fears for her child; but both must make up (all the days missed) in addition to feeding a needy person each day.[413] <If a person is incapable of fasting due to advancement in age, the fast is given up and a needy person fed each day>.

If a woman begins her period or is in the state of post-partum bleeding, she must break the fast and make up the missed days. It is not acceptable if she fasts (in those conditions). If she does not make up the (missed days) before she dies when it is possible to do so, a needy person is fed each day on her behalf. Supposing another month of Ramadan comes by a woman who has neglected to make up a previous fast, then she must fulfill the (current) fast, and then make up the previous fast and also feed a needy person each day. The same applies - in case of death or if the person is alive - to the sick person or the traveller who neglected to make up the previous fast until the next year of fasting.[414]

The sick person is allowed to break the fast if fasting will aggravate the sickness. It is reprehensible to take fasting upon oneself (in such a situation) although it is acceptable if performed, and so is the case with the traveller.

It is acceptable to make up the fast of the month of Ramadan inconsecutively; but, it is preferable to make it up consecutively.

If a voluntary fast is broken after it is started, it

is not obligatory to make it up; however, it is better if made up.[415]

A child capable of fasting at the age of ten[416] is exhorted to perform it.

An unbeliever who converts to Islam in the month of Ramadan must perform the fast for the remaining days of the month.

A person who sights alone the crescent of the month of Ramadan, must (begin the) fast. If the person is known to be reliable, then the people are notified of the sighting in order to (begin the) fast.[417] However, fasting of the whole month of Ramadan is only broken if sighting (of the crescent of Shawwal)[418] is confirmed by two reliable persons. It is not permissible to break the fast (of the whole month of Ramadan) if the crescent (of Shawwal) is sighted by one person alone.[419]

If the months appear doubtful to one who is captive, and a month is fasted which is intended for the month of Ramadan, then the fast is acceptable only if it coincides with the month of Ramadan or with the next month. If it corresponds to the month preceding Ramadan, the fast is invalid. It is forbidden to fast whether obligatorily or voluntarily on the two days of the two 'Ids or the days of tashriq. It is not only sinful to deliberately fast on these days but also invalid to perform an obligatory fast (on any of these days).

According to another report from Abu 'Abd-Allah, it is valid to perform obligatory fast on the days of tashriq.[420]

If the crescent is sighted at day time before noon or afternoon, it is considered as for the following night.[421] It is preferable to delay the sahur,[422] and to hasten to break the fast (at sunset).

A person who fasts the month of Ramadan and then follows that with the fasting of six days of Shawwal, though the days of Shawwal may be fasted inconsecutively, is (rewarded) as fasting one's lifetime.[423]

Fasting on the day of Ashura'[424] is considered as an atonement for a person's sins for a year; but fasting on the day of 'Arafah is an atonement for a person's sins for two years.

It is not recommended for a person (standing) on 'Arafah to fast, because the person must gain strength enough to pronounce supplications (that day).

The days of bid[425] that the Messenger of Allah -may the blessings and peace of Allah be upon him- incited people to fast are as follows: thirteenth, fourteenth, and fifteenth (of each month). Allah knows best.

6.2 I'tikaf[426] (religious seclusion)

He said: It is sunnah to perform i'tikaf except if a vow is involved, in which case it becomes obligatory. I'tikaf may be performed without fasting[427] unless a person

vows to fast.

I'tikaf is not performed except in a mosque where congregational prayers are performed.[428] Unless it is necessary or for the purpose of attending Jumu'ah prayers (elsewhere) a person may not go out of the mosque during i'tikaf. Unless stipulated, one shall attend neither the sick nor funeral prayer (outside of the mosque).[429] The i'tikaf is rendered void if sexual intercourse occurs, and in which case the i'tikaf may not be made up unless it is an obligatory i'tikaf.

The i'tikaf is abandoned if a person is subjected to civil unrest. The i'tikaf is resumed when safety is reinstated and provided a person has vowed to spend a certain number of days in the mosque and consequently, what days were abandoned are made up and the kaffarah of oath[430] is carried out (additionally).

Also, the i'tikaf is abandoned if a need arises for a person to leave for battle.

The person performing i'tikaf is not allowed to trade or earn (money) through work.[431] The person performing i'tikaf may marry in the mosque, and may also attend wedding ceremonies (while in the mosque).

During the i'tikaf, a widow must leave to carry out the 'iddah[432] and then resume the i'tikaf in the same condition and consequences as the person who leaves on account of civil unrest.

During the i'tikaf, a menstruating woman must leave the mosque and pitch a tent for herself somewhere in the public square (of the mosque).[433]

If a person vows to perform i'tikaf in a particular month, the mosque is entered before sunset.[434] Allah knows best.

7. Hajj[435] (Pilgrimage)

7.1

He said: To perform hajj, and 'umrah[436] is incumbent upon a person who has provisions and the means of transportation, while in full possession of the mental faculties, and is an adult.

It is acceptable to perform hajj and 'umrah for another person who has a sickness that is not expected to heal, or for an elderly person who cannot remain stable on the back of a camel.[437] The hajj or 'umrah in both cases are valid even if the person heals afterwards.[438] The law applies the same to a woman accompanied by a mahram as to a man.

If, out of negligence, a person dies without performing the hajj or 'umrah, part of his estate is used to perform the hajj and 'umrah on his behalf.

If hajj is performed on behalf of another person while the former has never performed it for himself, the cost of the hajj is paid back to the latter, and the hajj considered

valid for the former.[439] The hajj performed by a non-adult, is repeated when the person becomes an adult; or if it is performed by a slave it is repeated when the slave becomes free.

If hajj is performed accompanied by a child, the child is kept away from what the adult must avoid; and those rites the child is unable to perform by himself are performed for him.[440] Circumambulation (of the Ka'bah) is valid only for the person being carried and not for the one carrying the latter.[441] Allah knows best that which is right.

7.2 About the Miqats[442]

He said: The miqat of the people of Madinah is at Dhu 'l-Khulayfah.[443] The miqat of the people of Syria, Egypt and Morocco is at al-Juhfah, and that of the people of Yemen is at Yalamlam, and that of the people of Ta'if and Najd is at Qarn, and that of the people of the East (al-Mashriq), is at Dhat'irq. If 'Umrah is intended by the people of Makkah, the intention for it is formed from outside of the sacred precincts (of Makkah).[444] However, if hajj is intended, it is formed from anywhere in Makkah. A person's home is considered his miqat if it is located somewhere closer to Makkah than the (appointed) miqat.

Ihram[445] is entered into after drawing level with the miqat closest to the person if the person's route does not coincide with a miqat. The above appointed miqats are meant

not only for their people, but also for any other person who comes to them while intending to perform hajj or 'umrah. It is preferable not to enter into ihram before the miqat is reached. However, if it is done, the ihram is accepted.[446]

The miqat is returned to in order to enter into ihram if the miqat is passed without entering into the ihram. (Nevertheless), if the ihram is entered into at the place already reached, a blood sacrifice is required even if the miqat is returned to (later on) in order to re-enter into ihram.[447]

If, after passing the miqat without entering into ihram, it is feared that the hajj may be missed if the miqat is returned to, then ihram is entered into at the place (already) reached, and a blood sacrifice is required.[448] Allah knows best.

7.3 About Ihram

He said: If hajj is intended in the months[449] of hajj it is preferable on arriving at the miqat to perform ghusl, wear two clean garments and perfume oneself and then perform the obligatory prayer if it is time for it, otherwise two rak'ahs are performed (voluntarily).

If tamattu[450] is intended, and this is what is preferable to Abu 'Abd-Allah -may Allah have mercy on him- the following is pronounced: "O Allah, I intend to perform 'umrah." Stipulations are then pronounced as in the

following: "If detained by anything then the hajj is given up at which place detained," so that if detained at any place, the hajj could be given up and there is no penalty on the person.

If ifrad[451] is intended, the following is pronounced: "O Allah, I intend to perform hajj; and stipulations are pronounced (additionally).

If qiran[452] is intended, the following is pronounced: "O Allah, I intend to perform 'umrah and hajj; and stipulations are pronounced (additionally).

When a person is firmly seated on the means of conveyance, the talbiyah[453] is pronounced as in the following:

"Here I am, O Allah, here I am.
Here I am, You have no partner, here I am.
All praise is due to You,
all blessings are from You,
and Yours is sovereignty.
You have no partner."

The talbiyah is then continued (especially) when an elevated place is ascended or a valley is descended, or when partners meet, or if a man covers the head out of forgetfulness, and also at the end of obligatory prayers.

It is also recommended for a woman to perform ghusl when she is about to enter into ihram, although she might be in her menses or post-partum bleeding, because the Prophet

-may the blessings and peace of Allah be upon him- instructed Asma' bint 'Umays[454] to perform ghusl while she was in the state of post-partum bleeding. If ihram is entered into while a shirt is worn, the shirt is taken off without tearing it.

The months of hajj are: Shawwal, Dhu 'l-Qadah, and the (first) ten days in the month of Dhu 'l-Hijjah.[455] Allah knows best.

7.4 What the Muhrim[456] is Required to Guard Against, and That Which is Allowed

He said: The muhrim must, in the course of the ihram, guard against what the Almighty Allah, the Most Exalted, has forbidden[457] such as lewdness - that is to have sexual intercourse, and such as abuse - that is to exchange insults, and such as angry conversation - and that is to quarrel with one another.

It is recommended not to talk much unless it is useful. It is related from Shurayh[458] that whenever he had entered into the ihram he would act like a deaf serpent.[459]

The muhrim does not search for lice or kill[460] them. The muhrim may rub the head or body gently, but may not wear a shirt or pants or a hooded cloak.

Pants may only be worn if loin-cloth is not available. Khuffs may be worn if sandals are not available, but the khuffs should not be cut low,[461] and in which case there is

no penalty on the person.

A belt serving as a purse may be worn. Strips of leather may be incorporated into one another without forming knots.

Cupping is allowed but no cutting of the hair. It is allowed to wear a sword, if necessary.

It is permissible to throw an outer garment with full-length sleeves or an upper garment over the shoulder but hands should not be put into the sleeves.[462] It is not allowed to cover the head with a shade of the palanquin. If it is done, a blood sacrifice is required. A prey should not be killed or hunted, or pointed to by a muhrim, or should not lead a non-muhrim or a muhrim to it. If it is hunted by the non-muhrim for the muhrim[463] the latter should not eat it.

Perfume should not be used. A piece of cloth touched by a certain yellow dye plant resembling sesame used as a liniment (wars) or saffron or perfume may not be worn. However, it is permissible to wear what is stained with safflower.[464] The hair is neither cut from the head nor from (any part of) the body. Also, the fingernail is not cut unless it breaks (accidentally). The mirror may not be looked into for the purpose of adjusting anything. What smells of saffron may not be eaten.[465] (The skin) is not lubricated with anything whether or not it contains perfume. Perfume is not sniffed deliberately.[466] The head is not

covered with anything - and the ears[467] are part of the head.

The woman's state of ritual consecration is shown by her face. The veil is worn on the face if necessary. The edges of the eyelids may not be colored with black kohl.[468] She avoids everything the male muhrim is required to avoid except that she is allowed to dress and to cover the head with a shade of the palanquin. Gloves, anklets and so on are not worn.[469]

In pronouncing the talbiyah, the woman raises the voice only to the extent to which her (female) partner can hear her. The muhrim does not marry (in the state of ihram) and is not allowed to give someone in marriage to another. The marriage is invalid if it is performed (in such a situation).

If vaginal intercourse is had by the muhrim, whether or not semen is discharged, the hajj is rendered void for both of them. (Consequently), a fat she-camel must be sacrificed by the male muhrim if he forces the female muhrim (into having sexual intercourse with him). A fat she-camel is required on each of them if she yields to his wish. If sexual intercourse is had in other than the vagina while semen is not discharged, a blood sacrifice (of a sheep) is required. A fat she-camel is required if semen is discharged and also the hajj is rendered void. If the muhrim kisses while semen is not discharged, a blood sacrifice (of sheep) is required. A fat she-camel is

required if semen is discharged. According to another report[470] from Abu 'Abd-Allah, the hajj is rendered void if semen is discharged. If the muhrim glances (at someone), then turns away the eyes and then semen is discharged, a blood sacrifice is required. A fat she-camel is required if the gaze is repeated till semen is discharged.[471]

The muhrim is allowed to trade, manufacture handicrafts and to return to the (divorced) spouse. [According to another report from Abu 'Abd-Allah with regard to returning to one's wife, it must not be done (in the state of the ihram).][472] The muhrim is allowed to kill the kite, the crow, the scorpion, the mouse, vicious dog, and anything that attacks or harms and no penalty on the person.

Hunting in the sacred precincts of Makkah is forbidden on both the muhrim and non-muhrim. It is also forbidden (to cut down) its trees or plants except the fragrant kind of rush and what is planted by human beings.

If prevented [afterwards][473] (from completing the hajj or 'umrah), the available gift (of a blood sacrifice) is offered, and the ihram given up. If a gift is not available or it is not possible to obtain it, ten days are fasted[474] and then the ihram given up.

If prevented from reaching the (sacred) House due to sickness or loss of money, a gift (of a blood sacrifice) - if available - is sent to be slaughtered in Makkah, while the muhrim continues to maintain the state of ihram until he

or she is able to reach the House.[475] If the muhrim says: 'I am abandoning my ihram, and gives up the ihram, and then wears a sewn dress, kills hunted animals and does what the non-muhrim (only is allowed to do), an offer of a blood sacrifice is required for each violation committed, [and the person is considered still as in the state of ihram]. If sexual intercourse is (also) had, a fat she-camel is required in addition to offering blood sacrifices for all other violations; however, the person may proceed with the invalid hajj, and the hajj repeated the following year.[476] Allah knows best that which is right.

7.5 Concerning Hajj and Entering Makkah

He said: It is recommended, when intending to enter the sacred mosque (of Makkah), to enter through the gate of Banu Shaybah.[477] As soon as the (sacred) house is sighted, the hands are raised[478] and the takbir pronounced, and then the muhrim proceeds to the "Black Stone" - if it is there[479] - touches it, if possible, and kisses it. [If this is not possible, the muhrim stands facing (the Black Stone), raises the hands, magnifies Allah, the Almighty and Most Exalted, and pronounces the formula: La ilaha illa llah (there is no god but Allah)][480] and then uses the outer garment to observe idtiba'[481] and observes also ramal[482] in the (first) three rounds (of circumambulating the Ka'bah) and walks (normally) in the (remaining) four rounds. Each round begins from the

Black Stone and ends with it. Ramal is only observed in this (particular) tawaf.[483] It is not required from the people of Makkah. If forgotten it is not repeated. The muhrim (in the course of the tawaf) must be in the state of purity[484] and wear clean garments. The Black Stone and the Rukn-Yamani[485] are the only corners to touch or kiss. The Hijr (of Isma'il)[486] is included within the limits of circumambulating the Ka'bah because the Hijr is considered part of the (sacred) House. Two rak'ahs are then performed behind the Maqam,[487] and then the muhrim proceeds to Safa[488] passing through its gate and stands on Safa, magnifies Allah, the Almighty and the Most Exalted (by pronouncing the takbir), pronounces the formula: La ilaha illa llah, praises Allah and invokes blessings on the Prophet -may the blessings and peace of Allah be upon him, [and asks Allah the Almighty and Most Exalted for anything desired][489] and then descends from Safa and walks till the marked place in the middle of the valley is reached and then observes ramal between the (first) marked place and the (second) one, and then walks until Marwah[490] is reached, and then stands on it and pronounces likewise what is pronounced on Safa. Any supplication pronounced is acceptable. The muhrim then descends (from Marwah) and walks to the (first) marked place whereby ramal is observed until the second marked place is reached. This procedure is repeated seven times considering the departure (from Safa to Marwah) as one trip, and the

return (from Marwah to Safa) as another trip. The whole trip starts from Safa and concludes on Marwah. It is not a sin if ramal is not observed in some trips of the sa'y[491] out of forgetfulness. When the sa'y is finally completed, the hair is trimmed if tamattu' is being performed, and that concludes the ihram (for the 'umrah which is the first part of the tamattu').

Women perform tawaf and sa'y entirely by walking.

We dislike the performing of sa'y between Safa and Marwah while not in a state of purity, but it is valid.

If the iqamah is pronounced to begin the prayer or if a funeral prayer is ready to be performed while the Ka'bah is being circumambulated or the sa'y being performed, the prayer is joined until it is over then the tawaf or sa'y resumed (and completed).[492]

If the state of purity is lost in some rounds of the tawaf it must be re-entered into and the tawaf performed again provided it is an obligatory tawaf.[493] It is valid if the tawaf and sa'y are performed by a person being carried because of sickness.[494]

We recommend to a person undertaking ifrad or qiran to cancel (the intention for ifrad or qiran) after the tawaf and sa'y have been completed and consider that as 'umrah, unless with the person is a gift (of a blood sacrifice) in which case the initial ihram may be maintained. If tamattu' is undertaken, pronouncement of talbiyah is stopped as soon

as the (sacred) House[495] is reached. Allah knows best.

7.6 Concerning the Performance of Hajj

He said: Ihram for hajj is entered into on the day of tarwiyah,[496] then the pilgrim proceeds to Mina,[497] prays Zuhr there - if possible - because it is related from the Prophet -may the blessings and peace of Allah be upon him- that he prayed five obligatory prayers at Mina.[498]

When the sun rises (on the ninth day of Dhu'l-hajjah) the muhrim moves to 'Arafah and stays there until Zuhr and 'Asr prayers are performed (combined) [with the Imam] while pronouncing the iqamah for each prayer. It is acceptable if adhan is pronounced.[499] If the prayers are missed behind the Imam they are (both combined and) performed in one's camp.[500] The site of Mount 'Arafah is then proceeded to. It is valid to stand at any place in the plain of 'Arafah -except inside 'Uranah[501] which must be avoided, and wherein it is invalid to stand. Takbir is pronounced, and also the formula: la ilaha illa llah, and the muhrim concentrates on pronouncing supplications until sunset.

When the Imam[502] advances to Muzdalifah,[503] the muhrim then follows, [pronounces the talbiyah[504]] and takbir on the way, and remembers Allah the Almighty and Most Exalted, then performs Maghrib and 'Isha prayers (combined) behind the Imam and pronouncing iqamah for each prayer. It is acceptable if both prayers are combined with one iqamah

pronounced. If the prayers are missed behind the Imam, they are both performed by oneself alone.

After the Fajr prayer is performed, the muhrim [stands with the Imam] at al-Mash'ar al-Haram[505] to pronounce supplications, then leaves before sunrise. After reaching Muhassar,[506] the muhrim speeds up and does not stop (on the way) until Mina is reached while still pronouncing the talbiyah, and also picks up little stones on the way from Muzdalifah or in Muzdalifah.[507]

It is recommended to wash (the pebbles). After reaching Mina, seven pebbles are used to throw at Jamrat al-'Aqabah[508] <while pronouncing takbir> right after throwing each pebble, and the person does not remain standing thereafter.

The pronouncement of talbiyah is stopped at the beginning of throwing (the pebbles) and the gift (of a blood sacrifice) is offered, if available, the head is shaved or the hair trimmed, and thereafter - except having sexual intercourse - other things (previously unlawful while in the state of ihram) become lawful.

What is trimmed off the woman's hair is that which amounts to a finger tip.

The (sacred) House is then returned to, and circumambulated seven times and this is the obligatory tawaf[509] which completes the hajj. Two rak'ahs are then performed if ifrad or qiran is undertaken; and with that

everything is rendered lawful. However, if tamattu' is undertaken, the House is circumambulated[510] seven times and the sa'y between Safa and Marwah observed seven times as carried out (previously) for 'umrah. The House is then returned to and tawaf performed with the intention of a visit (to the House). This is what (Allah) the Almighty and Most Exalted said: "...and let them circumambulate the ancient House".[511]

Mina is then returned to. The nights of Mina may not be spent in Makkah.[512] On the following day when the sun begins to decline, seven pebbles are used to throw at the first jamrah and takbir is pronounced right after throwing each pebble, and the person remains standing a short while after the pebbles have been thrown, and then pronounces supplications, then throws at the middle jamrah using seven pebbles, and takbir is again pronounced as well as supplications. Then the last jamrah is thrown at, using seven pebbles, and no standing is required thereafter.

It is repeated on the second day such as on the first day.

If preferred to hasten (departure) by two days,[513] the pilgrim leaves before sunset. If the pilgrim is still there after sunset, then it is not permissible to leave until the three jamrahs are thrown at in the following afternoon as done the day before.[514]

It is recommended not to miss prayer behind the Imam at

the mosque of Mina.[515]

Takbir is pronounced at the end of every prayer beginning with the Zuhr prayer on the day of sacrifice until the end of the days of tashriq.

After getting back to Makkah, the pilgrim does not leave until the (sacred) House is bade farewell by circumambulating it seven times and performing two rak'ahs after all affairs have been completed so that the House is the last contact the pilgrim has. If after bidding the House farewell trade is engaged in, the House is returned to and farewell bade again[516] [before (finally) leaving]. If Makkah is left before the farewell tawaf is performed, it is returned to in order for the tawaf to be carried out if the pilgrim is close at hand, otherwise an offer of a blood sacrifice is sent out (to be slaughtered in Makkah).[517]

If a woman starts her monthly bleeding before she could perform the farewell tawaf, she is allowed to leave, and farewell tawaf is no longer required in this case and no penalty is on her.

If Makkah is left before the tawaf of visit is performed, it is necessary to return to Makkah from the pilgrim's country while entering into the state of ihram in order to circumambulate the (sacred) House. Even if the farewell tawaf is already performed, it still is not a replacement for the tawaf of visit.

The only difference between qiran and ifrad is that an

offer of a blood sacrifice is required for undertaking qiran but not for ifrad. If a blood sacrifice is not available then the pilgrim undertaking qiran must fast three days on the pilgrimage, the last day of which may be the day of 'Arafah, and (fast) seven days after returning home.[518]

If 'umrah is performed in the months of hajj, while the Ka'bah is circumambulated, sa'y (between Safa and Marwah) observed, [and the ihram given up] and if ihram is entered into again later on for the performance of hajj in the same year and while Makkah has not been left to a distance for which the prayer can be shortened, such a person will be considered as mutamatti', and must offer a blood sacrifice. If a blood sacrifice is not available, three days are fasted on the pilgrimage, the last day of which may be the day of 'Arafah, and seven days are fasted after returning to the home-country.[519] If the fasting is not observed before the day of sacrifice, it may be observed in the days of Mina[520] according to one[521] of the two reports from Abu 'Abd-Allah. The other report (states that): the days of Mina cannot be fasted;[522] (instead) ten days are fasted after the days of Mina while still requiring an offer of a blood sacrifice.

If the fast is already started before the pilgrim is able to offer a gift of a blood sacrifice, it is not necessary to switch from fasting to offer a gift of a blood sacrifice unless that is desired. If after entering into the state of ihram for tamattu', a woman starts her monthly

bleeding and fears that she might miss the hajj (because of her situation), she may then take on the (rites of the) hajj and she is considered (in such a situation) as a pilgrim undertaking ihram, and she is not required to make up the tawaf of arrival.[523]

If sexual intercourse is had before the final jamrah is thrown at, the hajj is rendered void for both partners, and a fat she-camel is required from the male-partner if he forces the female partner, but she is not required to offer a blood sacrifice. If sexual intercourse occurs after the final jamrah is thrown at, an offer of a blood sacrifice is required.

(In such a situation), the pilgrim proceeds to Tan'im[524] wherein ihram is entered into once again in order to circumambulate the Ka'bah while in the state of ihram. [The same procedure is followed by women.] It is permissible for water-suppliers and shepherds to throw at the jamrahs during the night, and it is also permissible for shepherds to delay the throw and make it up at the time of the next throw.[525] Allah knows best.

7.7 Payment of Fidyah[526] and the Penalty for Hunting

He said: If four[527] or more (pieces of hair) are cut (by the muhrim) whether <intentionally or> by mistake, three days of fasting are required or three sa' of dates are required to feed six needy persons or a sacrifice of sheep,

whichever is carried out is acceptable.

For every hair from (one to) three, a mudd of food is required and so is the case for fingernails. If perfume is used deliberately by the muhrim, the perfume is washed out and then a blood sacrifice is required. Also, if a sewn material or khuff is worn deliberately - while sandals are available - it is taken off, and a blood sacrifice is required.[528] No payment of fidyah is required for using perfume or wearing anything out of forgetfulness; whatever is worn is taken off and the perfume washed out and refuge is taken to pronounce the talbiyah. If the pilgrim stands at 'Arafah during the day and leaves before the imam does, a blood sacrifice is required.[529] A muhrim who leaves Muzdalifah before midnight, and who is not a shepherd or pilgrims' water-supplier, must offer a blood sacrifice.[530]

As a muhrim, if land-game is killed deliberately or by mistake, fidyah is paid in the equivalent of that which has been killed of domestic animals provided what is killed is an animal.[531] If it is a bird, fidyah is paid according to its value in its locality, unless what is killed is an ostrich, in which case a penalty of a fat she-camel is required, or if what is killed is a dove and so on, then a penalty of a sheep is required for each of them. The muhrim has an option,[532] if it is desired, to pay fidyah in the equivalent of that which is killed of domestic animals, or the equivalent estimated in dirhams and then valued in terms

of food and each needy person fed one *mudd*, whether rich or poor. Anytime game is killed, the *muhrim* is subjected to a penalty.[533] One single payment of *fidyah* is required if a group participates in the (killing) of game animals.[534]

If the pilgrim does not stand at *'Arafah* till the appearance of the dawn on the day of sacrifice, the intention for *hajj* is converted into *'umrah* and a sacrificial animal is killed, provided an offering is available, and then the *hajj* is repeated the following year accompanied by a blood sacrifice. A slave does not have to sacrifice, instead a day is fasted in place of each *mudd* of the value of a sheep, then the hair is trimmed and this ends the *ihram*.

A female *muhrim* cannot be refused by the husband from carrying out an obligatory (*hajj* or *'umrah*).

If an obligatory offering is carried along by the *muhrim* and it suffers damage before the *ihram* is completed, it may be used for anything desired but replacement is required. If it is carried along voluntarily, it is slaughtered at its place and left (exclusively) to the disposal of the needy and neither the *muhrim* nor those in the company of the *muhrim* may eat from it,[535] <and no replacement is required>.[536] The only obligatory offering that can be eaten is that of the person undertaking *tamattu'*.

Every offering or food is offered to the needy of the

sacred precincts (of Makkah) if it can be conveyed to them; except that the person who shaves the head because of (some) hurt may distribute it to the needy persons in the locality where the head is shaved.[537] As for fasting, it is acceptable if observed anywhere.

If a fat she-camel is required, it suffices to sacrifice seven sheep in its place.

Only sheep are acceptable for sacrifice if without incisors, and beast with incisors are acceptable from other animals.[538] Allah knows best.

8. Sales

8.1 The Option (of Cancelling or Confirming the bargain) by the Seller and Buyer

He said: Each seller and buyer has the option (of canceling or confirming the bargain) as long as they both have not physically separated from one another.[539] The option is rendered void if the commodity is damaged or a slave is freed by the buyer or is dead. In the event that they both separate from one another without canceling (the bargain) the commodity is returned only if it is defective or if it is an optional sale. It is permissible to grant an option for more than three (nights any three days).[540] Allah knows best.

8.2 Usury and Exchange, Etc.

He said: Quantitative disparity is not allowed in those things that can be measured or weighed so long as they are of the same type. If they are of different types quantitative disparity is only permissible if (the exchange) is done from hand to hand, and bartering is not allowed on a credit basis. Quantitative disparity is permissible in those things that cannot be measured or weighed so long as the exchange is done from hand to hand, but bartering is not allowed on credit.[541]

Fresh dates are not exchanged for dry ones of the same species except in the case of *'Araya*[542] (sale). What is based on measurement cannot be exchanged for anything of its species in terms of weight, and also what is based on weight cannot be exchanged for anything of its species in terms of measurement. All dates are of the same species although they are in different kinds. Wheat and barley belong to different species.[543] All meats are of the same species. Hence, it is not permissible to exchange one kind of fresh meat for another.[544] It is [not] permissible[545] to have them exchanged on the basis of equal weight if it is completely dried up. It is also not permissible to exchange meat for an animal.[546] If specifically gold is purchased for silver before everyone's eye, and then a defect is found with what is purchased, the purchaser has the option either to return it or keep it, as long as the material maintains the same

value of the day and the defect is [not][547] from outside of its species; [and the purchaser is compensated (only) for the loss caused by the defect]. If gold is purchased for silver unspecifically and then a defect is found with what is purchased, the purchaser is entitled to exchange (for pure gold) as long as the defect is not from outside of its species[548] such as the stain of gold and the tarnish of silver. However, if the defect is from outside of its species, the exchange is void. There is no bargain if both the seller and the buyer separate from one another before exchange is done from hand to hand.

The 'Arayah sale permitted by the Messenger of Allah -may the blessings and peace of Allah be upon him- is such as if a date palm which bears less than five wusuqs (of fresh dates on the palm tree) is donated to a person who sells it by means of estimation for dry (plucked) dates to those who like to eat them fresh.[549] However, the bargain is rendered void if the purchaser leaves the fresh dates to turn dry.[550] Allah knows best.

8.3 Sale of Trunk and Fruits (of a tree)

He said: If a pollinated date palm is sold, that is one whose spadix has broken forth, the fruit goes to the seller and the fruit (still) is left on the date palm until it is ready to be plucked, unless the buyer stipulated (to claim the fruit).[551] The same applies to selling a tree whose

fruit has become evident. It is not permissible to buy fruit excluding the trunk if the fruit's ripeness is not evident and which is subject to the condition that it remains on the tree until ready to pluck. It is acceptable if bought on the condition that it is plucked immediately. The bargain is invalid if it is left (unplucked) until its ripeness is evident.[552] It is acceptable if purchased after its ripeness is evident subject to the condition that it is left till ready to pluck.[553] [However, the bargain is invalid] if it relates to the fruit of a date palm. The evidence of ripeness for the fruit of a date palm is such as when the fruit turns red or yellow. The evidence of ripeness pertaining to the fruit of grapevines is such as when it turns juicy, and the ripeness of other than the (fruit of) date palms and other than grapevines is determined by when the fruit is evidently ripe. The sale of the cucumbers: Qiththa' and khiyar, eggplant and so on, is not permissible unless it is available for pick-up[554] and so is the case with the sale of a species of the trefoil and the buyer is responsible for the harvest. The contract is rendered void if the harvest is made conditional upon the seller.[555] It is not permissible to sell a fenced garden while reserving one sa' of the produce. It is acceptable if a date palm or a specific tree is reserved.[556] If the fruit is bought excluding the trunk and then affected by a climatic disaster, it may be returned to the seller.[557]

If a measured stuff or that which can be weighed or counted is sold and then becomes used up before it could be received (by the buyer), it is part of the seller's liability. Anything else does not need (the buyer's) receipt of it, hence, liability is on the buyer if it becomes used up.[558] If what must be received is bought, it is not permissible to sell it to another person until it has been claimed. Partnership (in what needs to be received), or resale of it at the cost price, or using it for the transference of a debt from one person to another, is treated the same as sale.[559] Revocation (of sale) is not treated as such because it is a cancellation (of sale).[560] According to Abu 'Abd-Allah, revocation of sale is considered as a bargain.[561] A pile of purchased food-stuff cannot be sold until moved out of its place. If the amount of anything is known, it cannot be sold in a pile.[562] If it is purchased in a pile on the condition that each measured part of it is exchanged for a specific price, it is acceptable.[563] Allah knows best.

8.4 Concerning an Unmilked Animal, Etc.

He said: If an unmilked animal is purchased unknowingly, the purchaser has the option of either accepting it or returning it[564] along with one sa' of dates.[565] [If unable to offer dates, its value is given] regardless of whether what is purchased is a she-camel or a

cow or a sheep.

If a non-virgin female slave is purchased and sexual intercourse is had with her or benefit derived from her, and then a defect in her is discovered, the buyer has the option of either returning her and claiming the full amount (paid for) - because the benefit derived is in compensation to the buyer's liability (to the slave in case she had died) and having sexual intercourse is considered as a service (entitled to) - or to (keep her and) accept the difference between the values of a healthy slave and a defective slave. If a virgin female slave is to be returned, the buyer must pay the amount to be deducted (due to depriving her of virginity) unless the seller has falsified the defect, in which case the buyer is entitled to full refund.[566] Every other sale is treated the same way. If part of what is defective is sold by the buyer before discovering the defect, the buyer has the option either to return the part (still) owned for its equivalent refund or, to keep (the remaining part) and receive proportionally to what is owned the amount fallen short due to its defectiveness.[567] If the defect is discovered after the slave is manumitted or after the slave's death during the time of ownership, the difference between the values of a defective slave and a slave free of defect is claimed. If a defect, which is possible to occur before or after the sale, is discovered, the buyer takes an oath and then either returns what is

purchased, or claims the difference between the values of what is defective and what is free of defect.

If anything is bought whose edible part is inside, and then found to be rotten after it is opened, and if it is such that it is valueless when opened such as a chicken egg, the seller must pay the refund. If it is (still) valuable after it is opened, such as a coconut, the buyer has the option either to return what is bought for a refund but must pay the amount fallen short due to breaking it, or to retain it and accept the difference between the values of what is defective and what is free of defect.[568]

If a slave is sold who has [little or much] property, the property goes to the seller, unless stipulated by the buyer whose intention was to buy the slave and not the property.

If an animal and so on is sold on the condition that the seller be freed from responsibility for any defect, the seller is not freed from responsibility whether aware or unaware of the defects.[569] If a commodity is sold on credit, it is not permissible for the seller to repurchase it (from the buyer) with less than what it is sold for.[570] If anything is sold with specification of gain[571] and later on it is found out that the seller has quoted a higher price than the actual amount, the seller must return (to the buyer) the overcharge, and which may be deducted from the profit. If the seller is informed that less than the

(actual) cost price has been quoted, the buyer must either return the commodity or give back the amount fallen short from misquotation, and also has the right to put the seller to oath that at the time of selling (the merchandise) the seller was not aware that the merchandise was being purchased for more (than its right price).[572]

If anything is sold and later on both the seller and buyer dispute over the price, they both must take an oath (provided no evidence is submitted by any of them) and if it is desired after that the buyer may take the seller's word for it, otherwise the bargain is rendered void.[573] The first to take the oath is the seller.[574] In case the commodity has been used up, they both must take an oath and then depend on the price of a similar commodity unless the buyer wishes to pay the price claimed by the seller.[575] If the dispute is over the description of the commodity, the buyer's word is taken after an oath is taken with regard to the description of the commodity.

It is not permissible to sell a runaway slave or a bird before it is hunted down or a fish in the reeds [and so on]. The agent who acts against a person's order (in the conduct of a transaction) is responsible for it unless it is accepted by the person in which case its payment becomes binding on the person.

Mulamasah[576] and munabadhah[577] sales are not permissible. Also, it is not permissible to sell the pregnancy (of an

animal) excluding its mother, and to sell milk in the udder.[578] It is also not permissible to sell the copulation of a stud.[579] Najsh[580] is forbidden, and that is to drive up the (price of a) commodity while not intending to buy it (but only to entice others to buy it). The sale of a town dweller on behalf of a non-town dweller is invalid - [and that is when a town dweller leaves to meet a non-town dweller who has brought goods and misleadingly says[581] to the person: 'I will sell for you'[582] - hence the Prophet -may the blessings and peace of Allah be upon him- forbade it and said: 'Leave the people for Allah to provide some of them with the means of subsistence through others'].[583] The Prophet -may the blessings and peace of Allah be upon him- also forbade meeting the caravans on the way[584] (to buy their goods or sell for them). [If they are met on the way or the goods bought from them, they have the option,[585] after reaching the market if they find out that they have been cheated, to cancel the bargain.][586] The sale of juice to a person who makes intoxicants of it is invalid. Two stipulations render a bargain invalid. One stipulation does not render it invalid.[587]

If a person says: 'I will sell you (this thing) for such and such a price, on condition that I buy dinar from you for such and such a price', the sale is not concluded. Also, if something is sold for gold on condition that certain dirhams are received from the buyer for (such and

such an) exchange that both will indicate, the sale is not concluded.[588]

The legal guardian may trade with the orphan's wealth and is not liable to payment (if there is a loss), and the whole profit belongs to the orphan. In case the wealth is given to a working partner (for a business), a share of the profit approved by the legal guardian is granted to the working partner. Responsibility is on the slave for debts incurred; and the slave (in such a situation) may either be redeemed by the master or subjected to sale. If the debts incurred exceed the monetary value of the slave, the master only pays his monetary value unless the slave is granted permission to trade, in which case it becomes incumbent upon the master to pay the whole debt.

The sale of a dog is invalid, even a trained one.[589] It is bad to kill a trained dog but no fine is imposed on the killer.[590] The sale of a lynx, a trained hawk, cat and every useful animal is permissible.[591]

8.5 Concerning Salam[592]

He said: Salam is permissible in whatever is determinable precisely through a certain way, and provided it can be measured or weighed or counted in a fixed manner and to a fixed time[593] according to lunar months, and provided it is also available on its due date. The price is received fully on concluding the contract for salam and

before separating from one another.[594] The contract is rendered void if any of these qualifications is not met. It is invalid to purchase an object of salam and then sell it before it is received (from the original vendor). Also it is invalid to engage in partnership in the sale of an object of salam before it is received, or to resell the object of salam at cost price,[595] or to use it for transference of a debt to another person whether it is a food-stuff or anything else. It is not permissible to sell two kinds of objects of salam for one price unless the price of each kind is made clear.[596] It is permissible to sell one object of salam on the condition that it is received according to certain portions at (certain) different times.[597] If the object of salam is unlike iron or lead or other imperishables or that which does not alter whether old or new, it does not have to be received before the due date. It is not permissible to demand security or a guarantee from the vendor of the salam.[598] Allah knows best.

9. Pawning

9.1

He said: Pawn may be accepted only if it is received from a person who has legal right of disposal, or if it is received through (one of the following) two ways: If the pawn is movable it is not considered as received until it is

taken possession of after it has been conveyed by the pawner to the pawnee. If it is immovable, such as a house or land, the pawnee claims receipt of it when it is transferred to his power and it is completely accessible to the pawnee. If the pawn gets into the hands of a person agreed upon conditionally by both parties to receive it, it is considered as received. It is not permissible to pawn someone's property to another person unless he is a reliable person. If a part of the pawnee's debt is paid, the pawn still remains in the hands of the pawnee (until the debt has been fully paid up). A slave given as security is free if manumitted (later on) by the pawner; and if the pawner owns some other property the (equivalent) value of the manumitted slave is deposited instead as the pawn.[599] If a pawned female slave has been made to bear a child by the pawner, she can no longer be treated as a pawn and therefore the (equivalent) value of such a female slave is taken from the pawner and deposited as the pawn.

If a pawned slave commits a crime, the victim has more rights of a legal claim than the pawnee until fully compensated (for the crime). If the slave owner chooses to and does redeem the slave, the slave remains in the same position as a pawn. If a pawned slave is wounded or killed, the person to carry on a lawsuit with regard to that is the slave master, and whatever is received (for compensation) as a result is deposited towards the pawn.

If a commodity is purchased on condition that a certain part of the buyer's property known to both parties is pledged as a security to the seller, or on condition that the seller is given a guarantor known to both for the price of the commodity, the bargain is valid. If the buyer declines to submit the pawn or if the guarantor declines to accept responsibility, the seller reserves the right either to cancel the sale or to proceed with it without (demanding) a pawn or a guarantor. The pawnee is not allowed to take advantage whatsoever of the pawn unless it is a riding animal or an animal that can be milked in which case it is permissible to ride or milk as much as it takes to fodder the animal.[600] House rent, services provided by the slave, pregnancy of the sheep and so on, and the fruits of a pledged tree are all considered as part of what is deposited as security.[601] The pawner must supply the provisions of the pawn. The pawner must provide the shroud of the deceased slave. If the pawn has to be stored, the pawner rents the storage room.[602] If the pledge becomes used up without any fault of the pawnee, the pawnee claims full right on the due date while the pawner takes the loss.[603] The pawnee must pay for it if he has transgressed or not taken (enough) care of it.

In the event of a dispute over the value of the pawn, the pawnee's word is taken, corroborated by an oath; and if the dispute is over the amount due to a person, the pawner's

word is taken,[604] corroborated by an oath provided none of them presents an evidence. The pawnee has more rights to the claim of his debt from what the pawn is worth than all creditors until full payment is received, whether the pawner is alive or dead.

9.2 Bankruptcy

He said: If a person is declared bankrupt by the judge, and then one of the creditors discovers his own property, he is more entitled to it (than all other creditors) unless the person wishes to give it up and be treated equally with (other) creditors.[605] If part of a commodity (sold to the one who is bankrupt) becomes used up or increased in such a manner that the increase cannot be separated from the commodity, or if the price of the commodity has fallen short somewhat, the seller of the commodity is treated equally with (other) creditors. [If a debt is owed a person, (anything already disposed of by the one who is bankrupt) before the judge declares him legally incompetent is valid.][606] If any right is due to a bankrupt person by virtue of a witness, and no oath is taken, the creditors may not take an oath beside (the attestation of) the witness to deserve it. If a debt not due immediately is owed by a bankrupt person, it does not become lawful on becoming bankrupt.[607] Also, it does not become lawful on the person's death if confirmed by the heirs of the deceased.[608] Anything

already disposed of by the one who is bankrupt <before the judge declares him legally incompetent> is valid. The creditors should be kind enough to bear the cost of maintaining the bankrupt person and those under his care out of his money until the dues are (fully) settled. The indispensable residence of a bankrupt person cannot be sold.

A person who claims to be in financial difficulty while responsible for a debt, is detained[609] until evidence supporting the claim for financial difficulty is submitted. If after death, a person is found to be bankrupt, none of the creditors is allowed to take back his or her own property.[610]

If a person responsible for a debt intends to travel while the debt is due before the end of the travelling period, such a person may be held from travelling by whosoever the debt is due to.[611] Allah knows best.

10. Declaring a Person Legally Incompetent (al-Hajr)[612]

10.1

He said: The wealth of a person found to be of sound judgment and legally mature is delivered over to him. Likewise the wealth of a slave girl, even if she is not married.[613] Sound judgment is determined by the person's competence to handle the wealth.[614] If found afterwards to be mentally deficient, the person is declared legally

incompetent a second time and (therefore), anyone doing business with such a person after that is only wasting money. If a legally incompetent person confesses what is punishable by hadd or requires retaliation, or pronounces his wife divorced, all that becomes legally binding. If a debt is confessed while the person is declared legally incompetent, it does not become binding during the person's state of incompetency.[615] Allah knows best.

11. Peaceful Settlement (al-Sulh)[616]

11.1

He said: An acceptable peaceful settlement is that which both the claimant of a right and the defendant compromise on a part of the right of which the defendant is not aware.[617]

If the defendant is aware of what is due but denies it, the compromise is invalid.

If a right is confessed and then compromise is made on a part of it, that is not a peaceful settlement,[618] it is rather the depriving of someone's right.

If two people summon one another because of a wall vaulted to their buildings, both must take an oath (in case no evidence is submitted by either of them) and the wall is divided between both of them. The case is the same if the (dispute is over a) wall not vaulted to their buildings. If

vaulted to the building of one of them, then it is his, after taking an oath.[619] Allah knows best.

12. Transference of Debt From One Person to Another (al-Hawalah) and Giving of a Guarantee (al-Daman)

12.1

He said: If a person to whom a debt is due transfers this debt to another person who owes the former an equal amount of debt and it is accepted, then the transferor is cleared (from debt) for ever.

If someone's debt is transferred to a rich person, it is obligatory to accept the transference.[620]

12.2 Guarantee

He said: If a person's right is guaranteed after it is due, or if it is said (to the person): 'What you have given is incumbent on me', then it is binding on the guarantor to pay the person for what has actually been given out. The person guaranteed for is not cleared (from debt) until the guarantor has paid (what is due). After the payment is made, the guarantor has the right to demand reimbursement from the person on whose behalf the debt is paid regardless of whether or not it was said (to the guarantor): 'Guarantee for me.' If a person who is bailed out is not turned over,

the bailsman becomes liable to what the person is liable to. In case the person dies, the bailsman is cleared (from responsibility).[621] Allah knows best.

12.3 Partnership

He said: It is lawful to enter into a co-partnership in bodily labours for the acquirement of gains (sharikat al-Abdan).[622] If two people enter into a partnership (business) using the wealth of one of them,[623] or two people enter into business using the wealth of another person,[624] or one person engages in a business with another person's wealth, or if the wealth of two people is used combined with the working effort of a friend of one of them,[625] or if two people enter into partnership using their own wealth whether or not both contributed the same amount (to the capital),[626] all that is valid.

Profit is shared between (business partners) according to what is agreed on, and the loss is borne by them proportionally to everyone's share of the capital. None of the partners is allowed to have more dirhams than the others. According to one of two reports, the working partner must pay for anything sold on credit without the permission (of the other partner).[627] According to the other report,[628] the working partner is not liable to any payment. If one person is being traded for, it is not permissible to trade for another person at the same time if it will result

in a business disadvantage to the first person.[629] Nevertheless, if it is done and profit is made the working partner's share of the profit (from the second trading) is added to the profit made for the first partnership. The working partner is not entitled to any share of profit until the capital is recovered in full. If two commodities are purchased by the working partner and profit is made from one of them while loss is suffered from the other, the profit made is used to make up for the loss. If the working partner finds out that he holds in his possession more (profit than permitted to have), no part of it can be used without the permission of the sleeping partner.

If it is agreed between the sleeping partner and the working partner upon sharing the profit between both of them and also bearing the loss, it is acceptable to share the profit between them but the loss is subtracted from the capital.

It is not permissible to say to a person (already) in debt: 'Trade with the wealth owed by you'. However, if some wealth is delivered in trust to the person, it is permissible to say: 'Trade with [part of] it'.

13. Agency

13.1

He said: A person can be appointed as an agent (wakil)[630] to buy or sell, demand rights,[631] manumit a slave and to divorce (on behalf of the client) regardless of whether the client (muwakkil) is present or absent. The wakil has no right to depute another person for what he or she has been appointed except if authorized to do so.

If the wakil sells anything and then claims the loss of the money without any transgression, no payment of guarantee is required. If suspected, the wakil is made to take an oath. If, upon being instructed to turn over some money to a certain person, the wakil claims that it has been turned over to that person, the wakil's word can only be accepted upon (the presentation of conclusive) evidence.

An agent may not buy from himself; and the same applies to a guardian appointed by testament[632] (wasi). A person can buy for himself out of the wealth of his infant child, and can also sell to the child out of his own wealth. Any action taken by the wakil after the death of the muwakil or the cancellation of authorization is invalid. If deputed to divorce a person's wife, the wakil remains authorized to do so until it is canceled or until the person has sexual intercourse with his wife. If deputed to buy something and a different thing is bought, the muwakil has the option of

whether or not to accept what is purchased. If unaccepted, the wakil is obliged to pay, unless the actual money (given to the wakil) is what is used to buy it, in which case the purchase is invalid. Allah knows best.

14. Acknowledgement of Debts

14.1

He said: If after acknowledging something, an exception is made from what is different from its kind, the exception is considered void, unless what is excepted is gold from silver, or silver from gold.[633] If something is claimed against a person, and the person says: 'I owed him but I have paid for what is owed', it is not an acknowledgment.[634] If after acknowledging ten dirhams, a person keeps silent long enough for a further statement to be made, and then says: '(I mean) counterfeit' or 'smaller (dirhams)'[635] or 'until one month', such an acknowledgement is for ten good, wafi[636] and immediately dirhams. If after acknowledging something, a lot is excepted from it - such as more than a half - the whole is imposed on the person and the exception is invalid.[637] If a person says: 'He has ten dirhams with me,' and then says: 'as a trust', the person's word is accepted. If the person says: 'I owe him a thousand dirhams', and then says: 'as a trust', the person's word is not accepted. If the following is said: 'He has a pawn with

me', and its owner says: 'as a trust', the owner's word is accepted.[638]

If a person dies leaving two children, and one of them acknowledges another brother or sister, the acknowledger must bestow the surplus in hand upon the person acknowledged.[639] Similarly, if a debt owed by a person's father is acknowledged, the acknowledger is (only) required to settle the debt in proportion to the share inherited (from the father). The opponent of every person I have mentioned whose word is accepted (in a dispute) is required to take an oath.

Acknowledgment of debt on a person's death bed is as valid as in a person's state of health provided it is not done in favor of an inheritor. If it is acknowledged in favor of an inheritor, the rest of the inheritors do not have to accept it unless evidence is presented.[640] Anything borrowed is guaranteed (against damage or loss) even if the borrower is not found transgressive. Allah knows best.

15. Illegal Seizure

15.1

He said: A person who takes somebody's land by force and sows in it, is obligated to uproot whatever is sown and to pay a rent up to the time of returning it (to its owner) and also to pay for whatever has fallen short of it due to

what is sown. If after the land is tilled, the owner gets it back while there are crops on it, the crops go to the owner of the land who must pay for the expenses incurred (for tilling the land). The illegal seizer of the land is required to pay a rent if the land is restored after it has been cleared of its crops. If a male or female slave whose value is one hundred (dirhams) is seized illegally and then increases in body or in the knowledge [of a trade] until the value rises to two hundred dirhams, and later on decreases in value to one hundred (dirhams) due to a bodily decrease or forgetting the knowledge (acquired before), the master takes the slave back and in addition he receives one hundred dirhams from the illegal seizer.[641] If sexual intercourse occurs with a female slave seized illegally and she is made to have children, the illegal seizer is liable to hadd,[642] and the slave as well as her children go to her master, and the equivalent dowry is claimed (from her illegal seizer). If sold by her illegal seizer, and the buyer has sexual intercourse with her and makes her bear children without knowing (that she was illegally seized), she is then returned to her (original) master with an equivalent dowry[643] and the buyer redeems the children who are considered free by paying for an equal number of slave children alike,[644] while claiming all expenses incurred from the illegal seizer. If anything is illegally seized and the person is unable to return it, he must pay its value. If he becomes

able to return it, the value paid is claimed back.[645] If a pregnant female slave is seized illegally and then bears a child in the hands of the illegal seizer, and the child dies, the slave goes back to her owner along with the most of what her (dead) child is worth.[646] If there is a fee for an illegally seized object, then the illegal seizer must return the object along with an equivalent fee for the duration of the illegal seizure.

No fine is imposed for destroying wine or swine belonging to a dhimmi. It is not allowed to interfere with dhimmis regarding practices which are not made public by them. Allah knows best.

16. (Right of) Preemption

16.1

He said: Preemption is due only to the partner who shares (a joint property) with someone; but if the boundaries (of the joint property) are demarcated or the ways and streets are fixed, then there is no preemption. He who does not claim preemption when he knows of the sale has no right to preemption.[647]

A person who, was absent, and then becomes aware of the sale on his arrival has a right to preemption even if it has been a long absence. A person has no right to preemption if, after becoming aware of the sale while on a journey,

does not have his claim to preemption witnessed. If unaware of the sale until a bargain is concluded between three or more people the person has the right to claim preemption from either one of them. If it is claimed from the first (buyer of the property), the second buyer recovers his money from the first buyer, and the third recovers it from the second. The child after becoming legally mature, has the right to claim preemption. If the buyer sets up a building the preemptor pays its cost unless the buyer prefers to pull it down which he has right to do[648] provided no harm is caused for doing so. If the purchase (of the property) is concluded by the payment of gold or silver, the preemptor also pays back in the same coin. If the purchase is made by paying goods, the preemptor pays the value of the goods. If there is a dispute between the buyer and the preemptor over the amount of money (paid for the joint property), the buyer's word is taken [corroborated by an oath], unless the preemptor presents evidence.

If a house is jointly owned by three people, and one of them owns a half of it, another owns one third of it, and another still owns one-sixth, and of which one share is sold by one of them, the other two persons become entitled to preemption in proportion to their shares.[649] If one of the (remaining) two persons gives up the right to preemption, the other person is obligated either to accept preemption for the whole (share of their joint-partner) or give it up.

The buyer is responsible for the preemptor, and the seller is responsible for the buyer.[650] The right of preemption cannot be inherited unless the deceased has demanded it (before passing away).[651] A partner (in a joint property) who gives permission for a sale to be made has the right (still) to claim preemption after the sale.[652] Preemption is not granted to a non-Muslim over a Muslim.[653] Allah knows best.

17. Musaqah[654]

17.1

He said: Musaqah contract is permissible with date palms, trees and grapevines on the condition that the share cropper receives a certain product of the fruits.[655] It is not permissible to grant the share cropper additionally some dirhams.[656]

Muzara'ah[657] is permissible on the condition that the share cropper receives a part of the yield of the cultivated land[658] if the seeds are provided by the owner of the land.[659] It is not permissible if both the owner of the land and the share cropper enter into an agreement that the owner of the land takes what he has sown but shares the crops grown by the share cropper, [and in which case the share cropper receives adequate payment. Also, the contract is invalid if the seeds are provided by the share cropper and in which

case the crops go to the share cropper who must pay land fee (to the owner of the land)].[660] Allah knows best.

18. Hiring

18.1

He said: If a hiring contract is concluded according to <a fixed period and> a fixed wage, the employer becomes entitled to the services (of the person hired) and the wages become due[661] on the employer at the time of (concluding) the contract, unless a time has been stipulated for the payment. If the hiring contract is signed against each month according to something fixed, none of the two contracting parties has the right to cancel it until the end of the month.[662] If after renting real estate for a specific period, the tenant decides to vacate it before the expiration of the period, payment of the <full> rent is binding on the tenant. The owner of the real estate has no right of disposal over it until the expiration of the lease period. If moved out by the landlord before the expiration of the (lease) period, the tenant does not have to pay rent for the period stayed. If overcome by anything that prevents taking (full) advantage of the contract signed for, the tenant is obligated to pay only for the period taken advantage of. If a person becomes sick after being hired to perform a specific job, another person is hired in place of

the sick to complete the job and the payment for the job done is due on the sick person. In the event of death of both the person hired and the employer or one of them, the contract remains valid.[663]

If real estate is rented, the tenant has the right to settle in another person provided it covers the period of the tenant's entitlement to live there.

It is permissible to hire and provide a laborer with food and clothing.[664] The case is the same with the wet-nurse. It is recommended at the time of weaning (the infant) to bestow upon the wet-nurse a male or female slave - according to what is related in hadith[665] - provided the person nursed for is financially able.

A person who rents an animal (to ride) to a certain place and then goes beyond the place must pay the specified fee, and an equivalent fee for the additional distance travelled, and must also pay the value (of the rented animal) if it suffers damage.[666] The case is the same with a person who rents it to carry a certain load and then carries more (than what is agreed upon) instead. It is not permissible to rent the animal for a period of a person's military expedition. However, if something specific is fixed for each day, it is acceptable.[667] It is not permissible to rent a camel to journey to Makkah when the camel-driver has not sighted the passengers, and has no idea of the kind of camel-borne litter needed, the footholds and

wrappers [and all what is necessary].[668] It is acceptable if two passengers are sighted or described while (the sizes of) the rest are mentioned (by their weights) according to fixed ritls.

The artisan must pay for any damage caused to the commodity in hand, but not if it is used up in a safe place;[669] and in which case no payment is due to the artisan for his labor. The cupper is not subject to liability, nor, the circumciser, nor a person practicing medicine, provided they are known to be professionally skillful and have never been charged with a crime. The shepherd is not liable (for damage) if no violation is committed.

18.2 Cultivation of Uncultivated land (mawat)[670]

He said: Whosoever cultivates a land that is not owned by anyone is entitled to it, unless it is a land with salt <or water> or what can benefit Muslims, in which case it cannot be exclusively owned. To cultivate the land, a wall has to be built around it or a well dug in it reserving an area twenty-five dhira'[671] around it. The first to discover an ancient[672] well may reserve an area fifty[673] dhira' from it. Part to which access is forbidden (harim) regardless of whether anything is cultivated, or whether the person is the first to cultivate such a land with or without the permission of the Imam.[674] Allah knows best.

19. Waqf[675] and Donations

19.1

He said: Anyone who, in a (normal) state of mental and physical health donates (an object of) waqf to a certain people, their children, and their last offspring, and then finally to needy persons, (henceforth) ceases to own the object of waqf.[676] It is not permissible for any part of the usufruct to go to the donor unless a stipulation is made to spend (some money) out of it in which case, the donor gets exactly what is stipulated[677] and the rest goes to the beneficiaries, distributed equally among the male children and their daughters, unless the donor favors some of them (over others).[678] If none of the beneficiaries is alive the (usufruct of the) waqf goes to the needy. According to one of two reports, if the needy are not made the final beneficiaries and no one remains among the actual beneficiaries, the usufruct of the waqf goes to the donor's inheritors. According to the other report,[679] the closest agnatic heir (ʿasabah) of the donor becomes the beneficiary. If an object of waqf is donated on a person's deathbed, or if the person says: 'It is a waqf after my death' without recommending that it to be taken out of one-third (of the estate), only one third may be donated towards the waqf, unless otherwise it is approved by the heirs. If it becomes waste and nothing is yielded, the object of waqf is sold and

the money used to buy what is capable of yielding (usufruct) to the beneficiary and this made waqf in place of the previous one. The case is the same with a horse donated as waqf, if it can no longer be used for military campaign. The money is then used to buy what is useful for the jihad[680] (legal war).

Zakah is obligatory on waqf beneficiaries who obtain five wusuqs (of land produce), but not on the needy beneficiaries. It is not permissible to donate as waqf anything that can only be used by consuming it such as gold, silver,[681] food-stuffs and drinks. Anything else is acceptable for donation as waqf.[682] Also, it is permissible to donate a joint property as waqf.[683] If the waqf beneficiary is not made known, or if the waqf is not for a charitable cause, it is invalid.

20. Gifts and Presents

20.1

Anything measured or weighed, if offered as a gift or sadaqah (charity) is not binding until it is received.[684] Otherwise, it is binding even if it is not received, provided the offer is accepted (by the beneficiary), such as the case is in the conduct of sale.[685] The father receives the gift on behalf of his (minor) child, or the recommended guardian after the father's death receives it, or the judge

or an authorized representative of the judge.

A parent who favors one child over another in terms of gifts is obligated to take it back according to the Prophet's instruction.[686] If it is not taken back before the parent's death the recipient of the gift becomes entitled to it, provided it is donated in a state of (good) health.[687] It is not permissible for the donor (of a gift) to revoke it, or for a person making a present to revoke the present even if there is no (material) return for it.[688] If a person says: 'My house is yours (to keep) for my lifetime', or 'it is yours to keep for your lifetime', the addressee and afterwards his heirs, become entitled to it. If it is said: 'It is yours to live in for your lifetime', the addressee may take advantage of it anytime desired, because the offer to dwell in the house is not the same as the offer made for umra and ruqba.[689] Allah knows best.

21. Luqatah[690]

21.1

He said: Public announcement must be made for one year <at the market places>, and at the gates of the mosques if a luqatah is found. If its owner shows up it is returned to him or her; otherwise, it may be considered as part of the finder's property.[691] The finder must keep the string with which it is tied, as well as its container, must count the

contents and remember its descriptions. It must be returned to its owner without requiring evidence[692] if he or she shows up and describes it (exactly), or the equivalent if it is already used up. In the event of the finder's death, the heir becomes responsible for it. If the owner (of a lost article) sets aside something specific for the finder, anyone who finds it is entitled to the reward if the lost article is picked up after learning about the reward. It is improper to accept it if the lost article is returned for the sake of reward when the lost article has been picked up before learning about the reward. If the finder is mentally deficient or is a child, the legal guardian makes a public announcement for a year on their behalf. If a whole year passes by (without anybody claiming it) it is then considered as part of the finder's property. If a lost sheep is found in a big city or in a dangerous area, it is a luqatah.[693]

Nobody should interfere with a (lost) camel and also any animal capable of defending itself.[694] Allah knows best.

21.2 Foundling

He said: A foundling is considered free and should be provided with maintenance from the public treasury (bayt al-mal) if found with no source of maintenance; and the wala[695] of the foundling belongs to all Muslims in general.

The finder, if unreliable, is prevented from travelling

with the foundling.

If a Muslim and a non-Muslim both claim they are related to a foundling, the foundling is presented to the physiognomists and consequently becomes affiliated to whichever of the two they attached him to.[696] Allah knows best.

22. Concerning Wills

22.1

He said: A legal heir does not become a beneficiary of a will unless approved by (other) heirs. If more than one-third[697] (of the whole estate) is bequeathed to someone other than legal heirs, provided it is approved by all the heirs after the death of the testator, it is acceptable. If disapproved, it is restored to one-third (of the whole estate). If someone is made the beneficiary of a will and all the while the person is evidently a heir, and then becomes disinherited before the death of the testator, the will made is firm (and valid), because (the validity of) the will is taken into account based on (what is declared before) death. If the beneficiary of a will dies before the testator, the will is void. If the will is declined by its beneficiary after the death of the testator, it is void. In the event of death of the beneficiary before the will is either accepted or declined, the beneficiary's heir decides

on behalf of the beneficiary, if the testator dies before the beneficiary.

If one share (sahm) of a person's estate is bequeathed to another person, the beneficiary of the will gets one-sixth (of the whole estate). According to another report from Abu 'Abd-Allah -may Allah have mercy on him-: The beneficiary receives a share as correctly determined by the rules of inheritance.[698]

If a portion equal to that of a heir who is not named is bequeathed to another person, the beneficiary of the will receives a portion equal in size to that of the least of all the heirs. For example, if a portion equal to that of one of the person's heirs is bequeathed and the heirs are: a son and four wives, the inheritance is divided into a grand total of thirty-two shares. The wives receive one-eighth of the whole shares which come out to four, and the remaining shares go to the son. To the grand total shares of the inheritance, add an equal share of one of the wives [which is one share] and [the bequest] is drawn out of thirty-three shares; and the beneficiary receives one share, each woman receives one share and the remaining shares go to the son. If three male children survive the deceased, while a comparable portion of one of the three children is bequeathed to another person, the beneficiary of the will gets one-fourth.[699] If one-fourth of a person's estate is bequeathed to 'Amr and one-half of it to Zayd, if it is not

approved by the heirs, one-third (of the estate) is divided between the two of them based on three shares, one share to 'Amr and two shares to Zayd.[700] If a will is made to the advantage of the children of such and such a person, it is divided equally among the male and female children. If the testator says: '(the bequest is) for the male children of such and such a person', it goes to the males excluding the females. It is permissible to offer as a bequest a pregnancy (of a slave or an animal) or to bequeath to a pregnancy if delivered in less than six months from the time the will is declared. If a female slave is bequeathed to Bishr and then to Bakr, she becomes the property of both of them. If it is said: 'What I bequeathed to Bishr must go to Bakr', then she becomes Bakr's.

If a will is written without being witnessed, it is executed as long as it is not known if the testator has revoked it. Anything offered on a person's deathbed is taken from the one-third (of the estate). Similarly (anything offered by) a woman who is six months pregnant (is taken from one-third of her property). A will made by a person of more than ten years old is valid if it is true.[701] If a will is made to the people of a village, the non-Muslims among them are excluded from benefitting from the will unless they are mentioned.[702]

It is permissible to offer one's whole estate as a bequest if the testator has no agnatic heir or a <u>mawla</u>.[703]

According to another report from Abu 'Abd-Allah -may Allah have mercy on him- It is not permissible to do so unless it is one-third[704] (of the estate). If one-third of a property is bequeathed to one's slave, the slave is manumitted provided one-third is enough to pay for the slave's (complete) freedom and whatever remains after the manumission goes to the (freed) slave. If one-third of the estate cannot pay for the slave's (complete) freedom the slave is manumitted by one-third, but subject to approval by the heirs.[705]

If a person says: '(I declare) one of my two slaves free', lots are cast between both of them, and whomever the lot falls on is free provided the slave's freedom can be paid for with one-third of the estate.[706] [Supposing a person makes a will for Zayd's slave to be bought for five hundred (dirhams) and be manumitted, and if the owner declines to sell the slave, then the five hundred (dirhams) go back to the heirs. If the slave is bought for less (than five hundred dirhams), what remains after that goes back to the heirs. If a slave worth one hundred (dirhams) is bequeathed to a person and nothing more, and then one-third of the whole estate in addition to a slave worth two hundred dirhams are bequeathed to another person; with the approval of the heirs, one-third of the two hundred (dirhams) in addition to one-quarter of what the slave is worth go to the person bequeathed one-third of the estate, and three

quarters of what the slave is worth go to the person bequeathed a slave. If it is not approved by the heirs, one-sixth of the two hundred (dirhams) in addition to one-sixth of what the slave is worth go to the person bequeathed one-third of the estate, because this is a bequest based on the whole estate, and then one-half of what the slave is worth goes to the person bequeathed a slave, because the bequest here is basically related to the slave.

A bequest is shared equally among the males and females of a person's relatives who are made the beneficiaries, but those beyond four male generations up are excluded,[707] because the Prophet -may the blessings and peace of Allah be upon him- did not include with regard to the share of the relatives those outside of Banu Hashim. If a person says: '(I am making a will) to the benefit of the members of my family (ahl bayti) the family members from both the father's side and the mother's side are included as beneficiaries. If a will is made that five hundred (dirhams) be used to perform hajj on behalf of the testator, any amount remaining after the hajj has been performed is still spent in the cause of hajj. If it is said: 'Five hundred (dirhams) should be used to perform hajj', then whatever remains after the hajj has been performed goes to the one who performed the hajj. If a person says: 'Perform one hajj on my behalf', anything remaining after the hajj has been performed is returned to the heirs.][708] If one-third of a

person's estate is bequeathed to another person, and then if the testator is killed whether intentionally or unintentionally and the blood money (diyah) received, one-third of the blood money goes to the beneficiary of the will[709] according to one of two reports. According to the other report, the beneficiary does not get anything from the blood money.[710] If a person is recommended as an executor (wasi) and if afterwards another person is (also) recommended, both become executors unless the testator specifies by saying: ['I have chosen][711] the first person'. A reliable person is appointed to assist the executor if found to be unreliable. If both persons are appointed executors and one of them dies, a reliable person is appointed to replace the deceased.

If on a deathbed or after a person's death, two slaves are declared manumitted besides which the testator owns nothing else, and if one of them is worth two hundred (dirhams) and the other is three hundred (dirhams) and the heirs have not approved of it, lots are cast between the two slaves, and if the lot marked 'freedom' falls on the slave who is worth two hundred (dirhams) then five-sixths of this slave is considered manumitted, which is equivalent to one-third of the whole estate. If the lot falls on the other slave then five-ninths of the slave is considered manumitted, because the whole property of the deceased is five hundred dirhams, and that is what the two slaves are

worth which has to be multiplied by three, and one-third of which is taken out, which is five hundred; and supposing the lot falls on the slave who is worth two hundred (dirhams), then this is multiplied by three and the result is six hundred, and so five-sixths of the slave becomes manumitted. The same procedure is followed if the lot falls on the other slave. The way to solving any problem regarding this subject-matter is to multiply it by three so as to produce no fraction.

If, without being named, a slave is bequeathed, the beneficiary becomes entitled to one of them after lots are cast provided one-third (of the testator's estate) is enough to pay for the slave's freedom, otherwise the beneficiary is entitled (only) to one-third of what the slave is worth. If something specifically is bequeathed and then used up after the death of the testator, the beneficiary is no longer entitled to anything. If the whole estate of a person is used up except what is (specifically) bequeathed, the beneficiary becomes entitled to the bequest. If a bequest is not picked up for quite a while by the beneficiary, its value is based on what it is worth at the time of the testator's death but not at the time of picking it up. <If testaments are made in which there is to be an emancipation of slaves, and if one-third (of the estate) is not enough to pay for the freedom of all the slaves, then all of them share one-third, and what falls short of each slave's

freedom is calculated proportionally to what each is entitled to by the will.>[712] If a will is made that a horse be used in the way of Allah, and one thousand dirhams be spent on its maintenance, and then if the horse dies, the thousand dirhams go back to the heirs. Also, if part of the thousand dirhams has been spent on its maintenance (before its death), anything remaining after that goes back to the heirs.[713] Allah knows best that which is right.

23. Laws of Inheritance

23.1

He said: The brother (of the deceased) or the germane sister or consanguine sister is not entitled to any share of the inheritance when there is a son (of the deceased), or the son's son, however low in descent, or when there is the father. The brother or the uterine sister does not inherit when there is a child whether male or female or when there is the son's child <or the father> or the grandfather (of the deceased). When there are daughters, sisters are treated as agnatic heirs in which case they get the residue and do not receive a fixed share when there are daughters. When there are no daughters, the son's daughters are treated like daughters (of the deceased). If there are daughters and the son's daughters, two-thirds (of the property) go to the daughters.

Nothing goes to the son's daughters unless there is a male among them who is their agnate, to share the residue in the ratio of two shares for the male heir and one share each for the female heirs. If the deceased is survived by a single daughter and son's daughter, one-half of the estate goes to the deceased's own daughter and one-sixth goes to the son's daughter - whether there is only one or more than one (daughter) - and that completes two-thirds (of the inheritance) unless there is a male among them in which case the residue is claimed and shared between them in the ratio of two shares for the male and one share each for the females.

When there are no germane sisters, consanguine sisters are treated like germane sisters. If the deceased is survived by germane sisters and consanguine sisters, two-thirds of the inheritance go to the germane sisters and nothing goes to the consanguine sisters unless there is a male among them who is their agnate to share the residue in the ratio of two shares for the male heir and one share each for the female heirs. If the deceased is survived by one germane sister and consanguine sisters, one-half of the property goes to the germane sister and one-sixth goes to the consanguine sisters - whether there is only one consanguine sister or more than one - and that completes two-thirds (of the inheritance) unless there is a male among them in which case the residue is claimed and shared between

them in the ratio of two shares for the male and one share each for the females.

If the deceased is survived by a mother and a single brother or a single sister, and provided there is no child or son's child, one-third of the property goes to the mother. If there is a child or [sisters][714] or two sisters, she only receives one-sixth. When there is a male child or son's child the father receives only one-sixth. If the deceased is survived by daughters, the father takes the residue (after the daughters have claimed their share of inheritance).

If the deceased has no child, the husband receives half of the property. If there is a child, he receives one-fourth. The wife receives one-fourth of the property whether she is alone or there are four of them, if the deceased (husband) has no child. If there is a child, the wives receive one-eighth.

The son of a germane brother is more entitled (to a share of the inheritance) than the son of a consanguine brother; and the son of a consanguine brother is more entitled than the son of the son of a germane brother; and the consanguine brother's son however low in descent is more entitled than [the paternal uncle's son][715] [and the son of a germane paternal uncle is more entitled than the son of a consanguine paternal uncle] and the son of a consanguine paternal uncle is more entitled than the son of the son of a

germane paternal uncle; and the son of a paternal uncle however low in descent is more entitled than the father's paternal uncle.

If the deceased is survived by the husband, father, and mother, one-half of the property goes to the husband, and the mother receives one-third of the remainder, and the residue goes to the father. If the deceased is survived by a wife, father, and mother, the wife receives one-fourth (of the inheritance), the mother receives one-third of the remainder and then the residue goes to the father.[716]

If the deceased is survived by the husband, mother, uterine brothers, and germane brothers, the husband receives one-half of the property, the mother receives one-sixth, the uterine brothers receive one-third, and the germane brothers are excluded. [This case is known as Himariyyah].[717]

If the deceased is survived by the husband, mother, brothers, uterine sisters, a germane sister, and consanguine sisters, one-half (of the inheritance) goes to the husband, one-sixth to the mother, and one-third shared equally between the brothers and the uterine sisters, and one-half goes to the germane sister and one-sixth to the consanguine sisters.[718] If there are two paternal cousins one of whom is an uterine brother (of the deceased), one-sixth of the property goes to the uterine brother, and the residue is shared in equal halves between both of them.[719] Allah knows best that which is right.

23.2 Basic Rules of Inheritance Shares Subject to 'awl[720]

He said: In a case involving one-half and one-sixth shares, or one-half and one-third, or one half and two-thirds, the basis (of calculation) is six which reduces by *'awl* to seven, or eight or nine or ten, and never reduces beyond these figures.

In the case of one-fourth and one-sixth, or one-fourth and one-third, <or one-fourth and two-thirds> it is based on twelve which reduces by *'awl* to thirteen or to fifteen or to seventeen, and does not reduce beyond these figures. In the case of one-eighth and one-sixth, or one-eighth and two-sixth, or one-eighth and two-thirds, the basis is twenty-four which reduces by *'awl* to twenty-seven and never reduces beyond that.

The residue returns to the *Qur'an*ic heirs[721] (*ahl al-fara'id*), in the proportion of their shares except the husband and the wife. If the deceased is survived by a germane sister, a consanguine sister and an uterine sister, the germane sister receives one-half (of the shares), the consanguine sister receives one-sixth, the uterine sister (also) receives one-sixth and the residue is returned to them in the proportion of their shares; [thus the estate is divided between them based on five shares, three-fifths go to the germane sister, one-fifth to the consanguine sister, and one-fifth to the uterine sister].[722] Allah knows best.

23.3 Grandmothers

He said: When the mother is not alive, the grandmother receives one-sixth (of the estate). Also, if there are several grandmothers, they do not receive more than a total of one-sixth (which is their) Qur'anic share. If some of them are nearer to the deceased than others, the share of inheritance goes to the nearest of them (to the deceased).[723]

The (paternal) grandmother is entitled to inheritance while her son is (still) alive.[724] Grandmothers of the same degree however many, such as the maternal grandmother of a person's mother, and the maternal grandmother of a person's father, and the paternal grandmother of a person's father, all receive the same share of inheritance.[725] Allah knows best.

23.4 Men & Women Who Inherit

He said: The following men inherit: The son, then the son's son however low in descent, the father, then the grandfather however high in ascent, the brother, then the brother's son, the (paternal) uncle, then the son of a (paternal) uncle, the husband, and a mawla ni'mah.

The following women inherit: The daughter, the son's daughter, mother, and then grandmother, sister, wife, and

the mawlat ni'mah.[726] Allah knows best.

23.5 The Grandfather's Share of Inheritance

He said: The school of Abu 'Abd-Allah -may Allah have mercy on him- with regard to the (share of the) grandfather is to go according to what Zayd bin Thabit[727] -may Allah be pleased with him- said. If the deceased is survived by brothers, and sisters and a grandfather, the grandfather shares the property with them like a brother among them until it is better to receive one-third of the property. If one-third is better for him, then he is given one-third of the whole estate.

If there are Qur'anic heirs along with a grandfather and brothers, <and sisters>, the Qur'anic heirs are (first of all) given their shares of inheritance, then the residue is looked into. If muqasamah[728] is more favorable for the grandfather than to receive one-third of the residue or one-sixth of the whole estate, then he is given a share from the muqasamah. If it is better for him to take one-third of the residue than to accept a share by muqasamah or one-sixth of the whole estate, he is given one-third of the residue. If he is better off with one-sixth of the whole estate than with muqsamah and with one-third of the residue, then he is given one-sixth of the whole estate. The grandfather never receives less than one-sixth of the whole estate or less than his designated share when fractions (of inheritance

shares) amount to more than unity.[729]

If the deceased is survived by a germane brother, a consanguine brother and a grandfather, the grandfather shares with both the germane brother and the consanguine brother (like one of their own brothers) based on three shares, and then (afterwards) the germane brother returns to the consanguine brother and takes from him what he has.

If the deceased is survived by a brother and a germane sister or a consanguine sister, and a grandfather, the estate is divided between the grandfather and the brother and the sister based on five shares. Two shares go to the grandfather, and two (other) shares to the brother, and one share to the sister.

If the deceased is survived by a germane sister, a consanguine sister, and a grandfather, the estate is divided between the two sisters and the grandfather based on four shares. Two shares go to the grandfather, and each sister receives one share, and then (afterwards) the germane sister returns to her consanguine sister and claims what is in her possession in order to complement half (of the estate). If the consanguine sister has her brother with her, then the estate is divided between the grandfather, the brother and the two sisters based on six shares. Two shares go to the grandfather, and two (other) shares go to the brother, and each sister receives one share, and then (afterwards) the germane sister claims what is in the possession of the

brother and sister in order to complement half (of the estate); hence the estate is divided into eighteen shares: six shares go to the grandfather, nine shares go to the germane sister, two shares go to the brother, and one share goes to the (consanguine) sister.

If the deceased is survived by the husband, mother, sister, and grandfather, one-half (of the estate) goes to the husband, one-third to the mother, one-half to the sister, and one-sixth to the grandfather; [and then the grandfather's one-sixth share and the sister's one-half share are divided between the two of them based on three shares; hence the whole estate is divided into twenty-seven complete shares. Nine shares go to the husband, six shares go to the mother, <eight shares to the grandfather>, and four shares go to the sister. This case is known as Akdariyyah.[730] The grandfather, along with the sisters, never receives a share of inheritance except in this case].[731]

If the deceased is survived by mother, grandfather and sister, one-third of the estate goes to the mother, and the residue is divided between the grandfather and the sister based on three shares: Two shares go to the grandfather, and one-share goes to the sister. [This case is known as Kharqa'.][732] If the deceased is survived by a daughter, a sister and a grandfather, one-half of the estate goes to the daughter, and the residue is divided between the grandfather

and the sister based on three shares: Two shares go to the grandfather and one-share goes to the sister.[733] Allah knows best.

23.6 Inheritance of Distance Kinsmen (Dhawu 'l-Arham[734])

He said: Inheritance is granted to distant kinsmen, in which case the undesignated Qur'anic heirs are placed in the same status as that of designated heirs that are equivalent to them. Hence, the maternal uncle is placed in the status of the mother, and the paternal aunt placed in the status of the father. It has been reported also from Abu 'Abd-Allah that the paternal aunt is placed in the status of the paternal uncle.[735] The brother's daughter is placed in the status of the brother. Every undesignated heir among distant kinsmen is treated exactly in this manner. A [designated] heir except the husband and the wife or a mawla ni'mah is more entitled to the estate than distant kinsmen. The males and females distant kinsmen are granted inheritance equally, provided they belong to the same father or same mother except the maternal uncle and maternal aunt in which case the maternal uncle receives two-thirds of the estate and the maternal aunt receives one-third.[736] If the deceased is survived by a daughter's son and another sister's daughter, the daughter's son is given his mother's right which is one-half (of the estate) and the sister's daughter is given her mother's right which is one-half (of

the estate). If the deceased is survived by a (sister's) son, a sister's daughter and another sister's daughter, one-half of the estate is divided equally between the sister's son and her daughter, and the other sister's daughter receives the (other) one-half of the estate. If there are three daughters of three different sisters, three-fifths (of the estate) go to the daughter of the germane sister, one-fifth goes to the daughter of the consanguine sister, and (another) one-fifth goes to the daughter of the uterine sister, [the three daughters are placed in the status of their mothers. The case is the same if there are three different paternal aunts].[737] If there are three daughters of three different brothers, one-sixth (of the estate) goes to the daughter of the uterine brother, and the residue goes to the daughter of the germane brother. If there are three daughters of three different paternal uncles, the (entire) estate goes to the daughter of the germane paternal uncle, [and the rest of the daughters receive nothing] because they are (all) placed in the status of their fathers.

If the deceased is survived by three different maternal aunts and three different paternal aunts, one-third (of the estate) is divided between the three maternal aunts based on five shares, and two-thirds divided between the three paternal aunts based on five shares. [Hence, the whole estate is divided into fifteen complete shares: The germane

maternal aunt receives three shares, the consanguine maternal aunt receives one share and the uterine maternal aunt receives one share. Six shares go to the germane paternal aunt, two shares go to the consanguine paternal aunt, and two shares go to the uterine paternal aunt.][738]

23.7 Various Issues Related to the Laws of Inheritance

He said: Hermaphrodites of indeterminate sex receive half of what a male receives in terms of inheritance and half of what a female receives. If urine is first discharged through the male urinary passage, the hermaphrodite is not of indeterminate sex; hence the law pertaining to his inheritance and other matters related to him are the same as for men. If the urine is first discharged through the female urinary passage, the hermaphrodite is treated according to laws of women.

The mother and her agnatic heirs inherit from the son of a mula'anah.[739] If he is survived by his mother and a maternal uncle, one-third (of the estate) goes to his mother, and the residue goes to the maternal uncle.

A slave does not inherit, and does not own property to be inherited. A slave partially free inherits or is inherited from or may exclude others according to the amount of freedom attained. If the deceased is survived by two sons one of whom acknowledges another brother, one-third of what is in the possession of the acknowledger goes to the

acknowledged brother. If a sister is acknowledged, she receives one-fifth of it.[740]

A person who kills another person can not inherit from him whether the killing is intentional or by accident. A Muslim does not inherit from a non-Muslim nor does a non-Muslim inherit from a Muslim unless the Muslim has freed the non-Muslim, in which case the estate of the manumitted slave is claimed by virtue of <u>wala</u>.[741] The apostate (<u>murtadd</u>) does not inherit from anybody unless he or she returns to <u>Islam</u> before the division of the estate. Also, a person who becomes a Muslim just before the estate is divided is included to receive a share of the inheritance. The property of the apostate, if put to death for apostatizing, is considered <u>fay'</u>.[742]

If two persons who can inherit from one another <are drowned>[743] or die under wrecking (of a building) and it is not known who died first from the two of them, they both inherit from one another. A person who cannot inherit cannot exclude (others from inheriting).

24. Clientship (Wala')[744]

24.1

He said: The <u>Wala</u> belongs to the manumitter (of the slave) even if the religions of the manumitter and the manumitted are different. If a slave is manumitted

unrestrainedly (sa'ibatan) the manumitter loses the right of wala', and if anything is taken out of the manumitted slave's property it is applied similarly.[745] (towards manumitting other slaves). <A distant kinsman>[746] related within the forbidden degrees of marriage is entitled to manumission by the owner, and the wala belongs to the manumitter. The wala of the mudabbar[747] or the mukatab if they are manumitted belongs to their owner. The wala of the umm al-walad after her death belongs to her owner. If a slave is manumitted by its owner on behalf of another person alive but without his or her authorization, or (if manumitted) on behalf of a dead person, the wala belongs to the manumitter.[748] If manumitted with an authorization, the wala belongs to the person with whose authorization the slave is manumitted.[749] If a person says: 'Manumit your slave on my behalf and the payment of his price is incumbent on me', [and if this is done, the slave becomes free] thus the person must pay the price, and the wala belongs to the person on whose behalf the slave is manumitted. If the person says: 'Manumit the slave, and the payment of the price is incumbent on me', the person must pay the price, and the wala belongs to the manumitter. If a slave is manumitted and has children by a mawlah of a certain people, the wala of the children is drawn to the manumitter of the slave.

24.2 Inheritance by Wala'

He said: Women do not inherit by wala except from slaves manumitted by them or from slaves manumitted by slaves who have been manumitted by them or from slaves manumitted by them through mukatabah or from those slaves manumitted through mukatabah by slaves they have also manumitted through mukatabah.

[According to another report[750] from Abu 'Abd-Allah -may Allah have mercy on him- specifically regarding the manumitted slave's daughter, and which is based on what is related from the Prophet -may the blessings and peace of Allah be upon him- who ruled in favor of the inheritance of Hamzah's daughter[751] from the person manumitted by Hamzah.][752]

The wala passes on to the closest agnatic heir of the manumitter. (For example), if after the death of the manumitter he is survived by the son of his own manumitter and the father of his own manumitter, one-sixth of the estate goes to the father and the residue goes to the son. If survived by a brother of his manumitter and a grandfather of his manumitter, the wala is shared equally between the two of them.[753]

If survived by two sons and a (manumitted) slave (mawla), and one of the two sons dies later on survived by a son and then followed by the death of the manumitted slave, the estate (of the freed slave) goes to the son of his manumitter, because the wala passes on to the nearest in kin

(to the emancipator) of the sons of the emancipator (kubr).[754] If the two sons die subsequently before the death of the manumitter's slave, and one of the two sons is survived by a son and the other is survived by nine sons [and then followed by the death of the manumitted slave (mawla-mu'taq)] the wala is shared between the (ten) children based on their (total) number, hence each of them receives one-tenth share of the wala. If a slave is manumitted the wala goes to the son of the manumitted slave,[755] and the blood-money of the manumitted slave) is the responsibility of the slave's agnatic heirs.

25. Deposit (Wadi'ah)[756]25.1

25.1

He said: If no transgression is committed, the depositary is not liable to payment (for the loss of what is deposited). The depositary is liable to payment of the deposit if it is mixed with the depositary's property to the point that it is inseparable or such as if it is not (properly) taken care of as the depositary takes care of his or her own property or such as if it is placed under the care of someone other than the depositary. If entrusted with certain things complete and they are mixed with other things fragmentary, or if fragmentary and they are mixed with other things complete the depositary is not liable to

payment (for their loss).[757]

If after having been instructed to keep the deposit in the house the depositary removes it out of the house for fear of fire or flood or anything which is predominantly destructive, no payment is required (for the loss of what is deposited).

If after having been entrusted with anything, the depositary is asked to turn it over at a certain possible time but does not do so until it becomes exhausted, then payment is required. It is considered a liability on the depositary if, after the depositary's death, what is deposited becomes inseparable from the estate. If a deposit is claimed on the depositary, and the depositary says: 'You have not entrusted anything to me', and then says: 'It got lost from a safe place', payment is required, because the depositary has shown reason to doubt his or her credibility. If the depositary says: 'You have nothing with me', and then says: 'It got lost from a safe place', the depositary's word is accepted and is not liable to any payment. If anything is placed under the care of a person, and two people claim it, and the depositary says: 'One of the two (men) placed it under my care, but I do not know who exactly is the person', lots are cast between the two of them, and whoever is the winner takes an oath that what is deposited is his or hers, and then it is submitted to the person.[758] If after having been entrusted with anything, the depositary takes something

out of it and then returns it or its equivalent, and if subsequently the entire deposit is lost, the depositary must pay the equivalent of what is taken out of it (before the entire deposit was lost).[759]

26. Division of Fay', Ghanimah[760] and Alms

26.1

He said: There are three types of (public) money, namely: fay', ghanimah and sadaqah.

Fay' is what is taken from the polytheist (mushrik) no matter what it may be without the use of force on horseback or camelback; and ghanimah is what is taken by force of arms.

One-fifth of a fay' or ghanimah is divided into five shares,[761] a share for the Messenger -may the blessings and peace of Allah be upon him- which is spent in (the purchase and maintenance of) horses, weapons and in the interest of Muslims, another share of the one-fifth is spent in favor of the descendants of Banu Hashim and Banu 'l-Muttalib, the two sons of 'Abd-Manaf,[762] wherever they may be, with the males among them receiving twice the share of the females[763] [regardless of whether they are wealthy or poor][764] <the third share goes to the orphans, and the fourth share goes to the needy>[765] and the fifth share of the one-fifth goes to the wayfarers.

The four-fifths of the fay' are spent equally in favor of Muslims in general whether rich or poor, except slaves.

The four-fifths of the ghanimah are divided between those who participate in the battle, a share to a foot soldier and three shares to a cavalry soldier, unless the calvary mounts on a half-bred horse in which case he receives two shares, one share for himself and another share for his half-bred horse.[766]

As far as alms are concerned, these should not go beyond the eight beneficiaries of alms that Allah the Most Exalted mentioned,[767] namely:

The poor: These are people who are chronically ill, and such as the blind who have no profession - and by profession occupation is meant - and neither do they own fifty dirhams nor the equivalent value in gold.

The needy: These may be beggars, or non-beggars who have profession except that they do not own fifty dirhams or the equivalent value in gold.

The alms agents - and these include collectors and keepers of the alms.

Those whose hearts are to be reconciled: These are the polytheists whose hearts are to be reconciled with Islam.[768]

Alms may be used also to free the captives such as the mukatabah slaves. According to what is related from Abu 'Abd-Allah -may Allah have mercy on him- the mukatab may be manumitted from the alms,[769] and the benefit from the wala is

used likewise (to manumit other slaves).

Debtors - [and these are persons in debt and unable to settle their debts].[770]

Alms may be used also in the way of Allah, such as for warriors, who are given what is enough to buy them animals, weapons and [what to strengthen them against][771] the enemy, even though they may be wealthy. Alms may also be given to a person to perform hajj[772] and that is in the way of Allah the Most Exalted.

Wayfarer - This is a person separated (from home) who, even with adequate resources back home, may be given some alms to return him back home.

It is not necessary to distribute alms to all of these beneficiaries, even though they might be present, but must not go beyond these beneficiaries. Obligatory sadaqah should not be given out to Banu Hashim [or their clients (mawali) or to one's parents however high in ascent or to one's child however low in descent or to the husband or the wife or to whomever maintenance is due or to a non-Muslim or to a slave unless they are alms agents in which case they are given what is due to them according to their service].[773] If a person takes charge of distributing his own zakah, then alms agents are out of the question. [A person who owns fifty dirhams or the equivalent value in gold is not entitled to zakah.][774]

27. Marriage

27.1

He said: A marriage contract cannot be concluded without a (marriage) guardian (wali)[775] and two witnesses[776] who must be Muslims.[777] The one most entitled to conclude the marriage contract for a free woman is her father[778] then her paternal grandfather however far up in ascent;[779] then her son and the son of her son however far down in descent,[780] then her germane brother - the consanguine brother is treated as in the same status as that of the germane brother[781] - then the (male) children of her brother however far down in descent, then her paternal uncles and then their (male) children however far down in descent, then the father's paternal uncles, then the Mawla Mun'im and then his closest agnatic heir, then the Sultan.[782] Each person mentioned above even if present may be represented by his or her agent. If the closest agnatic heir of the woman is a child or a slave or a non-Muslim, the more distant agnatic heir gives her in marriage. The person in charge of giving a woman in marriage can also give her female slave in marriage with the woman's permission,[783] and he who is in charge of giving her female slave in marriage can also marry her mawlah to another person.[784] If a man intends to marry a woman for whom he is the (marriage) guardian, he may place

her in the charge of another man to marry her to him with her permission.[785] A non-Muslim cannot in any way give a Muslim woman in marriage nor can a Muslim give a non-Muslim woman in marriage, unless the Muslim is a sultan or if he is the master of a female slave (to be given in marriage). The marriage is null if a woman is given in marriage by someone else other than the person who is more entitled to do so while that person is present and has not prevented the woman (from getting married).[786] If the marriage guardian is away in a place where he cannot be reached by correspondence or if he can be reached but cannot respond, then the more distant agnatic heir gives her away in marriage; if he is not available then the sultan gives her in marriage. The marriage is annulled if she is married to a non-kufʿ.[787] What is meant by kufʿ is a person who is religious and has proper position.[788]

If a man marries his virgin daughter to a kufʿ the marriage stands firm even if she dislikes him and regardless of whether she is old or young, and this is exclusively the father's right.[789] It is recommendable that the father ask permission of his mature virgin daughter (before giving her in marriage). If he marries his non-virgin daughter to a man without her permission, the marriage is invalid even if she accepts it later on. Permission of the non-virgin is determined by her word and the permission of a virgin is indicated by her silence. If a man gives his daughter in

marriage without claiming the marriage portion (sadaq) equivalent to what she is worth, the marriage is firm by the designated term.[790] If the marriage is contracted by someone else other than the father, the marriage is still good but the woman is entitled to a marriage portion (mahr) equivalent to what she is worth. A boy immature or insane[791] can only be married by his father or a guardian appointed by testament (wasi) who supervises his marriage.[792] If a man gives his female slave in marriage without her permission, the marriage is binding on her [even if she dislikes it], and regardless of whether she is old or young. If he marries his male slave against his will, the marriage is invalid[793] unless he is an infant slave. If two marriage guardians contract a marriage it is considered valid for the first of the two men. If the second man consummates the marriage without knowing that she has been married to the first man, both (the second man and the bride) are separated from one another, and she is entitled to a marriage portion equivalent to what she is worth from the (second) man, and her (true) husband may not have sexual intercourse with her until she has undergone three menstrual cycles since the last time the second man had sexual intercourse with her. If it is not known whom she was first married to between the two of them, the two marriage contracts are rendered void.[794] The marriage is invalid if the male slave gets married without the permission of his master.[795] If the slave

consummates the marriage, his master must pay two-fifths of the marriage portion according to what Uthman bin 'Affan said[796] -may Allah be pleased with him- unless two-fifths (of the marriage portion) exceeds the value of the slave in which case the master must pay only what he is worth or give him up. If a man is married to a female slave thinking that she is a free woman, and if he has sexual intercourse with her after which she gives birth to children, the children are considered free except that he must pay their price and the designated marriage portion (of their mother), and then claims all these (expenses) from the person who misleads him. Also, they are both separated from one another if he is such that he cannot be married to female slaves. (On the other hand), if it is permissible for him to marry them[797] and he accepts to continue the marriage relationship with the female slave, then henceforth his children by her since the time of agreement are considered slaves. If the person who is misled into marrying the female slave is himself a slave, his children by her are considered free,[798] and he must pay their price as soon as he is manumitted and he also claims the expense incurred from the person who misleads him.

If a man says: 'I am considering the manumission of my female slave as her marriage portion (in order to be married to her)', in the presence of two witnesses, both the marriage and the manumission stand firm. If he says: 'I

bear witness that I have manumitted her and have considered her manumission as her marriage portion (to be married to her)', the manumission and the marriage again stand firm, irregardless of whether he starts with the statement on manumission or delays it as long as there is no break between both statements. If he divorces her before the marriage is consummated, he must pay one-half of what she is worth. If the suitor (khatib) says to the marriage guardian: 'Will you marry (someone to me)?' and he says: 'Yes', and the marriage guardian says to the husband-to-be: 'Do you accept (to be married)?' and he says: 'Yes', then the marriage contract is concluded provided the (marriage proposal and the acceptance) statements have been pronounced before two witnesses. It is not lawful for a free man to marry more than four wives. A slave can only be married to two wives,[799] and he can have concubines with his master's permission.[800]

If at any time a free man or a slave divorces a woman whether revocably or irrevocably, he cannot marry her sister until the divorcee completes her ʿiddah. Also, if he divorces one of his four wives, he cannot marry until the divorcee completes her ʿiddah. The case is the same if a slave divorces one of his two wives.[801] If after asking for a particular woman's hand in marriage a man is married to another woman, the marriage is invalid. If he marries her on condition that he will not move her out of her house or

her city, she is entitled to fulfillment of her condition, because of what was related from the Prophet -may the blessings and peace of Allah be upon him: 'The stipulations you should fulfill most carefully are those which will give you the right to enjoy the (woman's) private parts'.[802] If he marries her on condition that he will not marry another woman besides her, she has the right to cancel the marriage contract if he marries (another woman) besides her.[803]

If a man intends to marry a woman, he has the right to see her but not to be alone with her.

If a man marries a female slave (to another man) and stipulates that she stays with (the man) during the day and that she be sent back to him at night, the contract and the stipulation are lawful, and the husband must provide maintenance to his wife during her stay with him.[804]

27.2 Women Unlawful to Marry and Those That Cannot be Married Together, Etc.

He said: Women unlawful to marry due to blood relationship are: Mothers, daughters, sisters, paternal aunts, maternal aunts, brother's daughters and sister's daughters.

Those unlawful due to other reasons are: Foster-mothers, foster-sisters, [mothers-in-law whose daughters' marriages have been consummated],[805] step-daughters, wives of sons, father's wives, two sisters

married together. Foster relationship makes marriage unlawful just as blood relationship makes it unlawful, and the milk of (the wife which belongs to) the man makes marriage unlawful.[806] A person is also prohibited to marry a woman and her paternal aunt together and so is the case if a person marries a woman and her maternal aunt together.

If a woman is married even if the marriage is not consummated, she becomes unlawful to her husband's father, husband's son, and her mother becomes unlawful to the husband. The grandfather however far up in ascent shares in this respect the same status as the father. The son's son however far down in descent also shares the same status as the son.

The daughters of all those we have mentioned as unlawful because of blood relationship or foster relationship are as unlawful as their mothers, unless they are daughters of paternal aunts, or of maternal aunts, or a daughter whose mother is married to a person's father or son, such are lawful to marry; and so is the case with the daughter of a wife whose marriage has not been consummated by the husband. Unlawful sexual intercourse makes (marriage between people) unlawful just as lawful or doubtful sexual intercourse makes it unlawful.

If a man marries two blood sisters or two foster-sisters in one marriage contract, both marriages are void. If he marries both of them in two marriage contracts,

the first married sister is only considered his wife. The same applies to them as to a woman and her paternal aunt married together or a woman and her maternal aunt married together. If a man marries his foster-sister and an unrelated woman in one marriage contract, his marriage with the unrelated woman stands firm.

If a man buys two sisters and has sexual intercourse with one of them, he cannot have sexual intercourse with the other sister until the first sister becomes unlawful to him either by selling her or by giving her in marriage or by giving her away and so on, and until it is known that she is not pregnant. If he ever owns her again, he cannot have sexual intercourse with one of them until the other sister becomes unlawful to him. Just as it is unlawful to marry a woman and her sister together, it is likewise unlawful to marry a woman and her paternal aunt or her maternal aunt together.[808] It is acceptable to marry both someone's previous wife and his daughter by another woman. A free woman and the slaughtered animals of the people of the Scripture (ahl al-Kitab) are lawful to Muslims.

A Muslim cannot marry a non-Muslim woman one of whose parents belongs to the people of the Scripture and the other is an idol-worshipper. If he marries a woman of the people of the Scripture who gives up her religion for another non-Muslim religion other than that of the people of the Scripture then she is obliged to become a Muslim; and if she

does not accept Islam before the expiration of her 'iddah, her marriage is void. It is lawful for a man to marry his female slave of the people of the Scripture but not his female slave who is a Zoroastrian.[809] A Muslim, even if he is a slave, cannot marry a female slave of the people of the Scripture[810] [because of what Allah the Almighty and Most Exalted said: (...From your own believing maids)].[811] Also, it is unlawful for a free Muslim man to marry a Muslim female slave unless he cannot afford to marry a free Muslim woman and he fears committing a sin. If he marries her while meeting the two conditions, namely: inability to afford (to marry a free Muslim woman) and the fear of committing sin, and if (later on) he becomes financially able, his marriage with her is not void. It is lawful for him to marry up to four female slaves provided the two conditions are met.[812]

If a man asks for a woman's hand in marriage but she does not accept him, another man may propose to marry her. If he alludes to a woman while in her 'iddah such as by saying to her: 'I certainly like someone like you', or 'anything decreed can happen', and other such expressions indicative of his desire for her, that is acceptable provided it is not a direct expression.

27.3 Concerning Marriage to Polytheists (ahl al-Shirk)

He said: If an idolater accepts Islam while he is married to four idolatresses whose marriages have not been consummated, they are irrevocably divorced from him, and each of the women becomes entitled to half of the marriage portion designated to her provided it is lawful (halal) or to a half of the marriage portion equivalent to what each of them is worth if what is designated is unlawful (haram). If the women accept Islam before him and before their marriages are consummated, they are still irrevocably divorced from him, and each of them is not entitled to anything from him. If the man and (all) the women accept Islam together, they remain (lawfully) his wives. If their marriages have been consummated before he accepts Islam, any of the women who does not accept Islam before the expiration of her 'iddah, from the time they assume different religions, is unlawful (to remain his wife).[813] If he marries more than four wives in one contract or in different contracts and then has sexual intercourse with them before he accepts Islam followed by their acceptance of Islam each in her 'iddah, then he is required to choose four of them and divorce the rest, regardless of whether those chosen are the first or last to contract their marriages. If he accepts Islam while two sisters are married to him, he must choose one of them.[815] Supposing they are a mother and her daughter and he

accepts Islam followed by their acceptance of Islam together before their marriages are consummated, his marriage to the mother is void (while his marriage to the daughter is valid), and if the mother's marriage has been consummated, the daughter's marriage is void. If a slave accepts Islam while married to two wives whose marriages have been consummated, followed by their acceptance of Islam in their ʿiddah, they are both his (lawful) wives; and supposing there are more than two wives, he must choose two of them.[816]

If he marries her while they are both of the people of the Scripture, and then he accepts Islam before or after the marriage is consummated, she is his (lawful) wife. If she accepts Islam before he does and before the marriage is consummated, the marriage is void and she is not entitled to receive her marriage portion, she only keeps whatever has already been received of what is designated for her [before she accepted Islam][817] even if it is unlawful. If it has not been received while it is unlawful, then she is entitled to the marriage portion equivalent to what she is worth (provided the marriage is consummated) or to half of the marriage portion equivalent to what she is worth (if the marriage is not consummated) whichever (between the two cases) becomes binding. If he marries her while they are both Muslims and then she apostatizes before the marriage is consummated, the marriage is void and she is not entitled to any marriage portion. If he apostatizes before she does,

<and before the marriage is consummated> the case is the same except that he must pay half of the marriage portion. Supposing she apostatizes after the marriage is consummated, then she is not entitled to maintenance; and if she does not return to Islam in the course of her *'iddah*, the marriage is void. If he apostatizes [after the marriage is consummated] and does not return to Islam before the expiration of her *'iddah*, the marriage is void since the time they both assume different religions.[818] If a person marries a woman under his guardianship (*waliyyah*) to another man on condition that he may also be married to the other woman under the man's guardianship, both marriages are invalid even if they also designate the marriage portions to one another beside that condition.[819] *Mut'ah*[820] marriage is not permissible. If a man marries on the condition that he may divorce his wife at a certain time, the marriage is invalid. The case is the same if he marries her on condition that he may render her lawful to her previous husband.[821] If a *muhrim* marries to himself or to someone else or if someone marries to the *muhrim*, or if the person is married to a female *muhrim*, the marriage is invalid.[822] If either one of the husband and wife finds the other partner to be insane, or to be afflicted with elephantiasis or with leprosy or if the wife's vagina is found to be closed up or growing a piece of flesh or to be frothy and loose preventing sexual pleasure or found to be opened up, [or if the man's penis is

completely damaged][823] whoever finds any of those defects with the other partner has the option to void the marriage contract.[824] If it is voided before sexual intercourse is had, payment of the marriage portion is not necessary. If after having had sexual intercourse the husband claims he was not aware of the defect in his wife and takes an oath, he has the right to void the contract, while he is required to pay the marriage portion the expenses of which are to be claimed later on from the person who misleads him. The wife (in this case) is neither entitled to accommodation nor maintenance, because accommodation and maintenance are due to a woman whose husband has the right to return to her after divorce.

A female slave who is manumitted while her husband is still a slave has the option to void the marriage contract. If the male slave is manumitted before the freed wife takes an option on the marriage or before sexual intercourse is had with her, she loses her option regardless of whether she is aware of the option or not.[825] If a female slave is owned by two persons and one of them declares her manumitted, she cannot take an option on the marriage if manumitted by the person in financial difficulty among them.826 If she chooses to continue the marriage relationship with her husband before or after the marriage is consummated her marriage portion goes to her owner. If she chooses to discontinue the marriage before it is consummated she is not

entitled to any marriage portion. If after the marriage is consummated she chooses to discontinue the marriage with him she becomes entitled to a marriage portion which goes to her owner.

27.4 A Respite to the Impotent and the Eunuch Whose Penis is not Damaged

He said: If a woman claims her husband is impotent and unable to engage in sexual intercourse, the husband is granted a respite for one year since the time a complaint is made against him. If he does not have sexual intercourse with her during the given time, she is given the option to choose between continuing the marriage with him or discontinuing it. If she chooses to discontinue the marriage, the marriage is void without (the need for) pronouncing divorce (talaq). If he says: 'She knew I was impotent before I married her' and she admits it or he substantiates it with a proof, then no respite is granted him and she is (still) his wife. If after the marriage is consummated she becomes aware he is impotent but says nothing about (voiding the marriage contract) and if later on she demands that the marriage contract be voided, she has the right for that marriage contract to be voided, and hence, the husband is granted respite for one year since the time of the complaint against him. If she says at any time: 'I am satisfied with his impotence', she does not have the

right to make any claim afterwards. If she admits that he has once had sexual intercourse with her, then any accusation against his impotence is denied. If he claims that he engaged in sexual intercourse with her, and she says that she is a virgin, she is presented to a reliable woman (for confirmation and verification) and if what she claims is confirmed, the husband is granted a respite for one year. If his penis has been completely damaged before a year passes by, then she has the option during that time.[827] If she is not a virgin and he claims that he is able to engage in sexual intercourse with her, he is left alone with her <in a room> and is told: 'Discharge your semen on something'. If she claims that what is discharged is not semen, the fluid is placed on a fire. If it liquifies it is considered semen and her claim is void.[828] Another report is related from Abu 'Abd-Allah -may Allah have mercy on him- that the husband's word is accepted, corroborated by his oath.[829]

He said: If the hermaphrodite of indeterminate sex says: 'I am a man', he cannot be denied marriage to a woman, and he cannot afterwards marry (men) based on the other (female reproductive organ). Similarly, if a hermaphrodite says at once: 'I am a woman', then she can only be married to a man.[830] He said: If a man and woman have sexual intercourse in a valid marriage while each of them is free, an adult, and is sane, they are both stoned to death if

adultery (zina) is committed. The case is the same if a free non-Muslim or a free Muslim is involved in what I have described.

28. Marriage Portion (Sadaq)

28.1

He said: If a woman is of age, in good sense regardless of whether or not she is young, her father contracts the marriage on her behalf, and whatever is agreed upon as marriage portion is acceptable, provided it is something which can be halved.[831]

He said: If a man offers a specific slave as a marriage portion to a woman and she finds him defective and so returns him, she is entitled to whatever the slave is worth from the man. The case is the same if he marries her on the condition that she receives a male slave for her marriage portion and he turns out to be a free man or owned by someone else regardless of whether or not he has been received by her.

If he marries her on the condition that he may buy her a specific slave, and the slave is not sold to him or if more than his price is demanded or if he is unable to get the slave, then she is entitled to whatever the slave is worth.[832]

If he marries her on the condition that she receives

[wine or swine or other such forbidden things][833] while both of them are Muslims, the marriage stands firm and she is entitled to the marriage portion equivalent to what she is worth, or she is entitled to half of it if divorced before the marriage is consummated.[834]

If he marries her on the condition that she receives one thousand (dirhams) and another thousand (dirhams) for her father, it is acceptable. If he divorces her before the marriage is consummated, he is entitled to half of the two thousand (dirhams) from her, and the father is not required to pay back anything he received. If he offers her as marriage portion a young male slave who later on grows older, and then he divorces her before the marriage is consummated, if she wishes she may either return to him half of what the slave is worth on the day the marriage was contracted or she may return half of what the slave is worth after he has grown older unless he is better off with what the slave is worth young than when he has grown older, in which case she must return to him half of what he is worth at the time of the marriage contract unless he is willing to accept half of what the slave costs (after having grown older).

If after concluding the marriage contract there is dispute over the amount of the marriage portion and there is no evidence on what exactly is the amount, the wife's word is accepted provided her marriage portion does not exceed

the value equivalent to what she is worth.[835] If the husband denies that he owes his wife a marriage portion, her word is again accepted according to her claim for the marriage portion equivalent to what she is worth regardless of whether it is before or after the marriage is consummated unless the husband presents an evidence confirming his clearance from the payment of her marriage portion.[836]

He said: If he marries her without (fixing her) a marriage portion and then divorces her before the marriage is consummated, she is only entitled to a compensation (mut'ah)[837] from the wealthy according to his financial ability and the person with limited resources according to his means, the maximum of which is to provide her with a (slave) servant and the minimum is to provide enough clothing that can be worn to perform the prayer unless he prefers to offer her more, or she prefers to accept less.[838] If, before the marriage is consummated, she demands that her marriage portion be fixed, he is compelled to do so, and if a marriage portion equivalent to what she is worth is fixed for her then she is entitled to that and nothing else. The case is the same if less marriage portion is fixed for her and she is satisfied with it. If either the husband or wife dies before sexual intercourse is had and before a marriage portion is fixed, the surviving partner is entitled to inheritance and she is entitled to the marriage portion equivalent to what she is worth.[839]

He said: If after the marriage contract is concluded, he spends time alone with her, and then says: 'I did not have sexual intercourse with her' and she confirms it neither claim is taken into consideration, instead they are treated as a couple whose marriage has been consummated in all that concerns them,[840] except in the case of a woman who may return to her former husband after having been divorced three times, or in the case of (being accused of) committing zina[841] in which cases [they are subjected both to hadd],[842] but not stoned to death, regardless of whether he spends the time alone with her while they are both in the state of ihram or are fasting or while she is menstruating or whether they are both free from these things.[843]

He said: The marriage tie is in the hand of the husband.[844] If the wife is divorced before the marriage is consummated, then whichever of them excuses his or her partner from paying the marriage portion due to the other partner while having a legal right of disposal of his or her own wealth, then that partner is cleared from liability regarding the payment of the marriage portion. The husband is not liable to payment of his wife's maintenance if she is incapable of engaging in sexual intercourse or if he is prevented from (having sexual intercourse with) her for no acceptable reason. If the excuse is from him, then he must pay her maintenance. If he marries her based on two marriage portions one of which is secret and the other made

public, he is liable to payment only of what is announced publicly even if the marriage contract is concluded through the portion made secret.[845]

He said: If he offers as a marriage portion [a specific number of] sheep which later on reproduce young ones and then divorces her before the marriage is consummated, she becomes entitled to the young ones and he may claim from her half of the original sheep offered, unless they have been depreciated by the process of reproduction in which case he has the option to either accept half of what they are worth at the time of the offer of the marriage portion or to accept half of the original sheep in their depreciated state.[846]

He said: If he offers her land as a marriage portion and she builds a house on it or if he offers her a piece of cloth and she dyes it, and then he divorces her before the marriage is consummated, he is entitled to claim from her half of what the marriage portion is worth at the time it was offered, unless he wishes to give her half of what the building or the dye is worth so that he may take possession of half (of the building or the dyed piece of cloth) or unless she wishes to give him the additional value and nothing else.

29. Wedding Banquet (Walimah)

29.1

He said: It is desirable for a married person to hold a banquet even if only with a sheep. Any person invited to the banquet must attend.[847] If the invitee does not like to eat anything, he or she may pray for the married couple and then leave. The practice of inviting people on the occasion of someone's circumcision was unknown to the earlier generation of Muslims,[848] and a person invited does not have to attend. However, according to the *sunnah* any person invited to a wedding banquet must attend.

He said: *Nithar*[849] is considered reprehensible because it is a kind of greedy grasping, and sometimes the object of *nithar* may be snatched by someone else whom the owner of the object loves less.[850] If shared out to those in attendance it is acceptable. [This is according to what is related from Ahmad -may Allah have mercy on him- that one of his children became proficient (in the memorization of the *Qur'an*) and he distributed walnuts to the children.][851]

30. On Relations With Women

30.1

He said: The man must deal equitably with his wives in

the division (of his time between them). Night time is the basis for division of man's time between his wives. He is not considered disobedient (to Allah) if he has sexual intercourse with one wife and does not do so with the other. With his female slave wife he spends one night, and spends two nights with his free wife even if she is of the people of the Scripture.[852] The wife is neither entitled to maintenance nor assigned a share of the husband's time if she travels [without][853] obtaining his permission. If sent off by the husband, she is entitled to all of that. If he intends to travel, he may only go out with any of them based on casting lots, and then resumes the rotation between his wives on arrival. If he marries a virgin, he spends seven (straight nights) with her before resuming the rotation, and does not charge to her the time spent together. If she is not a virgin, he spends three (straight nights) with her and then resumes the rotation without charging to her also the time spent together.[854] If the wife gives reason to fear disobedience (nushuz) from her, the husband must admonish her. If she shows again signs of disobedience he banishes her (to sleep apart), and if this holds her in check (all well and good), otherwise he scourges her without causing violent pain.[855] If there is a breach between the husband and the wife, and it is feared that they might be led to violation (of Allah's law) the judge (Hakim) sends for an arbiter from the husband's family and an arbiter from her

own family,[856] both of whom must be reliable, accepted and appointed by the husband and wife[857] in order to amend (the situation) between them if possible, otherwise separate them (in peace), and any decision made by the two arbiters is binding on the husband and wife.

31. Khul'[858]

31.1

If a woman feels aversion for the husband but is unwilling to refuse him what may render her disobedient by so doing, it is permissible for her to free herself from him. It is not recommendable for him to accept more than what is given her. If she seeks khul' from him for a reason other than what we have mentioned, such action is considered reprehensible but the khul' is valid.

Khul' is a dissolution of marriage (faskh) according to one of two reports.[859] According to the other report, it is considered as irrevocable divorce.[860] A woman in the course of her 'iddah for khul' cannot be affected by the pronouncement of divorce even if she is faced with it.[861] Supposing she says to her husband: 'Grant me khul' in return for a compensation with dirhams in my hand', and he does so, she must pay three dirhams if there is nothing in her hand.[862] The khul' is valid if granted without the husband accepting any compensation for it, and nothing is due to him

later on.[863] If the man grants khul' to his wife in return for a piece of cloth and then finds it to be defective, he has the option of either (to keep it and) claim the difference of value between the defective and non-defective cloth or to return it for the full value of non-defective cloth. If he grants her khul' in return for a male slave which turns out to be free or owned by someone else, she must pay his value.

Supposing she says to him: 'Divorce me three times in return for one thousand (dirhams)', and he divorces her once, nothing is due to him, and the divorce is binding on her.[864] If a female slave seeks khul' from her husband in return for something specific without obtaining permission from her owner, the khul' is effective, and if manumitted she must return the equivalent of that thing to the husband if it is available, otherwise its value is required. Anything received by a slave from his wife as a compensation for khul' is acceptable and this goes to his owner. If on her deathbed a woman seeks khul' in return for more than what her husband can inherit from her, the khul' is effective and the heirs have the right to claim back the excess from the husband.[865] [Supposing he divorces her][866] on his deathbed and makes a will for her to get more than what she will have inherited from him, the heirs have the right not to give her more than her share of inheritance from him. If she seeks khul' in return for anything forbidden while

they are both non-Muslims <and he receives the compensation from her>[867] before both of them accept Islam, or before one of them accepts it, he cannot claim anything more from her.[868]

32. Divorce (Talaq)

32.1

He said: Divorce, according to the sunnah, is when a man pronounces his wife divorced one time in the state of purity in which no sexual intercourse is had and then stays away from her until the ʿiddah is completed.[869] It is also according to the sunnah if she is pronounced divorced three times in a state of purity in which no sexual intercourse was had although the husband has given up what is most preferable.[870]

If he says to her: 'You are divorced according to the sunnah', while she is pregnant or in a state of purity in which no sexual intercourse is had, the divorce is valid. (If she is pronounced divorced) while in a state of menstruation, the divorce is binding on her as soon as she is pure again. If pronounced divorced while in a state of purity in which sexual intercourse is had with her, the divorce is binding on her as soon as she enters into the state of purity from the next monthly period. If he says to her: 'You are divorced by bidʿah',[871] while she is in a state

of purity in which no sexual intercourse is had, the divorce is not effective until he has sexual intercourse with her or until she starts her period. If he says to her while she is in her menstrual state and has not consummated the marriage: 'You are divorced according to the sunnah', she is divorced from that instance, because such a woman is neither affected by the sunnah nor bid'ah divorce.

He said: Divorce pronounced by an insane person not from intoxication is invalid. There are reports related from Abu 'Abd-Allah -may Allah have mercy on him- concerning the pronouncement of divorce by a drunk person. According to one report: The divorce is not binding on him. Another report states that it is binding on him. According to another report: Abu 'Abd-Allah was undecided[872] and he used to say: 'The Companions of the Messenger of Allah have different opinions about it'.

Divorce is binding on a child who pronounces divorce with full understanding of what divorce is (and its consequence).[873]

He said: It is not binding on a man forced to divorce his wife.[874] He is considered as forced only if subjected to some kind of affliction such as beating, strangling, or thigh squeezing and so on. Being threatened alone cannot be considered as force.[875]

32.2 Explicit Divorce, Etc.

He said: If a man says to his wife: 'I have divorced you' or 'I have parted from you' or 'I have released you', the divorce is binding on him.[876] If he says to her in anger: 'You are free', or if he slaps her and says: 'Consider this as divorce', the divorce is binding on her.[877] Abu 'Abd-Allah said: If a man says to his wife: 'You are free to go', or 'you are dismissed' or 'you are irrevocably separated', or 'your reins are on your withers' or 'go back to your family', each is considered by me as three divorces,[878] however, I dislike giving legal opinion (fatwa) on it regardless of whether the marriage has been consummated or not. If a man pronounces an explicit expression of divorce it is binding on him regardless of whether he means it or not.

Supposing it is said to him: 'Do you have a wife?' and he says 'No', as a deliberate lie, nothing is binding on him. If he says: 'I have divorced her' and deliberately lies, divorce is binding on him. If he offers his wife as a gift to her family and it is accepted, she is considered as divorced from him once, and he still has the right to reconciliation (raj'ah) if the marriage has been consummated. If it is not accepted nothing is binding.[879] If he says to her: 'You have the power in your hand' (the power to) divorce is considered as in her hand, no matter

how long[880] it takes her to declare herself divorced provided he does not abrogate his statement or have sexual intercourse with her. If she says: 'I elect to be by myself', she is considered as divorced once and he still has the right to reconciliation.[881] If she divorces herself three times and he says: 'I permitted her to do so only once', no attention is paid to his claim and whatever is carried out by her is valid.[882] The case is the same if he grants the power for divorce to someone else other than his wife. If he grants his wife the option (to either stay married to him or to be divorced from him) and she (instantly) elects to be divorced from him, she is considered as divorced from him instantly, otherwise she loses the right to exercise the option afterwards. Unless she is given the right to divorce herself more than once she cannot choose to do so.

He said: If a man divorces his wife verbally but reserves something in his heart, the divorce is binding, and the reservation has no effect. If he says to her: 'You are divorced in such a month', she is not divorced until the sun has set on the last day after the stipulated month. If he says to her: 'If I ever divorce you, you are divorced', as soon as he pronounces her divorced, two divorces become binding on him provided the marriage has been consummated. If the marriage has not been consummated, one divorce is binding. If he says to her: 'If I do not divorce you, you

are considered divorced' without intending a particular time, and does not divorce her until his or her death, the divorce is binding on her at the last possible moment. If he says to her: 'Everytime I do not pronounce you divorced, you are considered divorced', three divorces are binding on her if the marriage has been consummated. If he says to her: 'You are considered divorced if such a person arrives', and the person is brought back by force or brought dead, she is not considered divorced.[883] If he says to his wife whose marriage has been consummated: 'You are divorced, you are divorced', two divorces are binding on her, unless he means by the second pronouncement of divorce to make it clear to her that she is divorced in which case she will be considered as divorced once. If her marriage is not consummated, she is considered irrevocably divorced by the first pronouncement of divorce and not bound by whatever is pronounced afterwards, because it is still considered as an initial statement. If he says to his wife whose marriage has not been consummated. 'You are divorced and divorced and divorced', three divorces become binding on her because such statement is considered as a coordinated sequence; it is the same as the statement: 'You are divorced three times'.[884] If a man divorces his wife three times and he means one time, it is considered as three. If he divorces her once and he means three times, it is considered as once.[885]

32.3 Partial Divorce

He said: If a man says to his wife: 'Half of you is divorced', or 'your hand is divorced', or 'a part of your body is divorced', or if he says to her: 'You are half divorced or 'one-quarter divorced', she is considered divorced (in each case) once. If he says to her: 'Your hair or your fingernail is divorced', the divorce is not binding on her[886] [because hairs and fingernails break and grow back. They are not like other permanent parts of the body].[887]

If a man is not aware of whether or not his wife has been divorced, (let it be known to him that) having certainty of one's marriage cannot be affected by the doubts one has of divorce. If he pronounces divorced but does not know whether he has divorced once or three times, he must stay away from her and pay her maintenance as long as she is in ʿiddah. If he returns to her while she is in ʿiddah he must pay her maintenance but not have sexual intercourse with her until he is certain how many times he has divorced her, because (in the first place) he is certain (of the granting of divorce) which makes her forbidden to him but doubtful about whether she is lawful to him (by reconciliation).

If a man says to his wives: 'One of you is divorced' but does not intend any one in particular, lots are cast to determine the divorcee among them.[888] Also, if he divorces one of his wives but forgets who she is, lots are cast to

determine her.[889] In case the man dies before determination is made by casting lots, the lots are cast by his heirs to determine the divorcee and then the estate goes to the rest of the wives.[890] If a man divorces his wife less than three times and she completes her ʿiddah and marries another man who has sexual intercourse with her and also divorces her or dies, and then she completes her ʿiddah after which the first husband remarries her, she remains married to him based on whatever remains of the three divorces.[891] If a male slave divorces his wife two times regardless of whether she is free or a slave she does not become lawful to him until she marries another man, because divorce is considered from the side of the man, and ʿiddah is considered from the side of the woman.[892] If a man says to his wife: 'You are divorced three-halves of two divorces', she is considered as divorced three times.

32.4 Concerning Reconciliation (Rajʿah)[893]

He said: A wife whose marriage has not been consummated is considered irrevocably divorced by a single pronouncement. For a free man, the wife becomes forbidden to him if she is pronounced divorced three times and she becomes forbidden to a slave husband with only two divorces pronounced.

If a free man divorces his wife less than three times [after the marriage has been consummated],[894] he has the

right to return to her as long as she is in 'iddah. The slave husband has the right to return only after the first divorce (during her 'iddah) as opposed to the free man who may return before the third divorce.

If a wife, pregnant with twins, is pronounced divorced and she delivers one child, the husband can return to her before the second child is delivered.

To return to her, the husband says to two Muslim men: 'Bear witness to me that I hereby return to my wife', without the need for the presence of the marriage guardian and without offer of additional marriage portion. Another report related from Abu 'Abd-Allah -may Allah have mercy on him- indicates that it is permissible to return to her without the presence of witnesses.[895] If the husband says to his wife: 'I have returned to you,' and she says: 'I completed my 'iddah before you returned to me', her word is accepted [corroborated by her oath] if what she has claimed is possible. If he pronounces her divorced once, and just before she completes the 'iddah he pronounces her divorced the second time, she may carry out the 'iddah based on the days that have already been completed.[896] If he pronounces her divorced and then calls upon (two Muslim men) to bear witness to his return to her without her knowledge and she carries out her 'iddah and then marries another man who has sexual intercourse with her, she is returned to the first husband but he cannot have sexual intercourse with her until

she completes the 'iddah according to one of two reports related form Abu 'Abd-Allah -may Allah have mercy on him.[897] According to the other report, she is considered the wife of the second man.[898] If he divorces her <three times>[899] and she completes her 'iddah and comes back to him and then mentions that she married a man who had sexual intercourse with her and then divorced her or died leaving her and she completed her 'iddah from that marriage, provided that is possible, he can remarry her if she is known for truthfulness and righteousness. If she is not known to him to be in this condition he cannot remarry her until he confirms the truthfulness of her statement.[900] Allah knows best.

33. 'Ila'[901]

33.1

He said: the mu'li is a person who swears by Allah the Almighty and Most Exalted not to have sexual intercourse with his wife for more than four months.[902] If four months pass by and she summons him, he is ordered to return (to her),[903] meaning he must have sexual intercourse with her, unless he has an excuse such as sickness or being in a state of ihram or in a situation in which sexual intercourse is impossible, and he may say then: 'As soon as I am able, I will have sexual intercourse with her', and this statement

of his will be considered as his return to her in the light of the excuse. If he ever becomes able and does not have sexual intercourse with her, he is obliged to divorce her.[904] If he does not divorce her, the judge divorces her on the husband's behalf.[905] If the judge divorces her three times on the husband's behalf, she is considered divorced three times.[906] If the judge divorces her once and then the husband claims reconciliation with her more than four months since the time of the <u>'ila'</u>, the legal consequence is the same as previously mentioned.[907] If he is summoned after four months (of <u>'ila'</u>) and he says: 'I had sexual intercourse with her', his word is accepted corroborated by his oath if she is a non-virgin. If he declares <u>'ila'</u> to her and does not have sexual intercourse with her before divorcing her and she carries out her <u>iddah</u> after which time he remarries her more than four months since the time of the <u>'ila'</u>, he is summoned to return to her as (previously) described.[908] If he declares <u>'ila'</u> to her and there is dispute between them over whether or not four months have passed by, his word is accepted corroborated by his oath that four months have not passed by.[909]

34. Zihar[910]

34.1

He said: If a man says to his wife: 'Your back is to me as the back of my mother' or 'as the back of a woman outside the prohibited degrees (ajnabiyyah') or 'you are to me forbidden' or if he declares a part of her body forbidden to him, he cannot have sexual intercourse with her until kaffarah is carried out. In the case of his or her death or if she is divorced (after zihar has been pronounced on her) kaffarah is no longer necessary. If a man remarries his wife (after pronouncing zihar and also declaring her divorced) he cannot have sexual intercourse with her until kaffarah is carried out, because the breaking of zihar is determined by going back on one's word, namely to have sexual intercourse, and Allah the Almighty and Most Exalted prescribed kaffarah for a person who pronounces zihar on his wife before it is broken.[911] If a man says to a woman outside the prohibited degrees: 'Your back is to me as the back of my mother', he cannot have sexual intercourse with her if he ever marries her until he has carried out kaffarah for pronouncing zihar.[912] If he says to her, 'You are to me forbidden' and he means by that statement: at the present time, nothing is binding on him, even if he marries her later on, because what he said was true; but if he means by

that statement at any time, then he cannot have sexual intercourse with her if he ever marries her until kaffarah is carried out. If he pronounces zihar on his wife who is a slave while he has not carried out the kaffarah and then becomes her owner, the marriage is rendered void and he cannot have sexual intercourse with her until kaffarah is carried out.[913]

If a man pronounces zihar on his four wives by a single statement, only one kaffarah is binding on him.[914]

He said: To carry out kaffarah a believing slave is manumitted[915] who must be free from defects that are detrimental to work. If this is not possible, two successive months have to be fasted. If the fast is broken for (an acceptable) reason, it is continued later on based on what has already been observed. If broken for no (acceptable) reason the fast has to be started again. The days already fasted are rendered void if a man has sexual intercourse with his wife during the nights of fasting; and if so, he is required to start the fast of two successive months again.[916] For the person who is unable to fast (the penance is) the feeding of sixty needy [Muslims who must be free] to each needy person is offered a mudd of wheat [or flour] or a half of sa' of dates or barley.[917] According to one of two reports, it is acceptable to give a needy person two mudds a day for two kaffarahs.[918]

A person who starts fasting (in order to carry out

kaffarah) for zihar on the first day of Sha'ban may break the fast on the day of Fitr and then continue the fast afterward based on the number of days already fasted. Also, if it is started on the first day of Dhu'l-hijjah,[919] it is discontinued on the day of 'Id al-Adha and on the days of Tashriq, and then resumed afterward based on the number of days already fasted.[920] A slave who pronounces zihar carries out the kaffarah only by fasting, and only two consecutive months are acceptable.[921] A man is considered disobedient to Allah if he has sexual intercourse with his wife before kaffarah is carried out; nevertheless, the kaffarah as mentioned is binding on him. If a woman says to her husband 'Your back is to me as the back of my father [and you are to me forbidden], she is not considered as having pronounced zihar because she has uttered a reprehensible word or told a lie. If a man pronounces zihar repeatedly on his wife and has not carried out the kaffarah, only one kaffarah becomes binding.[922]

35. Li'an[923]

35.1

He said: If a man accuses his wife who is an adult, free and a Muslim, of committing adultery by saying to her: 'You have committed adultery' or 'you adulteress!' or 'I saw you commit adultery', without presenting any evidence, he is

liable to hadd unless he undergoes the process of li'an regardless of whether he is a Muslim or a non-Muslim, free or a slave. He can not be subjected to hadd or li'an until it is demanded by the (accused) wife. As soon as both of them have undergone the process of li'an, the arbiter separates them[924] and they are never reunited. If subsequently the man admits he has been lying he is liable to hadd. If he falsely accuses his wife and disclaims her child and the process of li'an is carried out between them resulting in their separation by the arbiter, paternity is denied, if the child is mentioned during the li'an.[925] If subsequently he admits he has been lying the child is then attached to him. If pregnancy is denied, paternity cannot be denied until the child has been delivered and the li'an carried out.[926] Supposing his wife delivers a baby and he says: 'She has not committed adultery, but this child is not mine', the child is legally considered to be his and the man is not liable to hadd.[927]

The kind of li'an that averts the punishment of hadd from a person is that in which the husband says in the presence of the arbiter: 'I bear witness before Allah that she has committed adultery' and points to her or mentions her name and lineage if she is not present, and the testimony must be accomplished four times after which the man is interrupted before the fifth testimony, and the following said to him: 'Fear Allah because Allah's curse is

incumbent and (remember) that the punishment of Allah in this world is less severe than that of the last day'. If he insists on completing (the final testimony) then the following statement should be made additionally: 'That the curse of Allah be on him if he is a liar in accusing his wife of adultery'.

The wife in her turn says: 'I bear witness before Allah that he has told a lie,' four times. Then she is interrupted before the fifth testimony and made to feel an appropriate fear (of perjury) as in the case of the man. If she insists on completing (the final testimony) she makes the following statement additionally: 'that the wrath of Allah be on her if he speaks the truth in accusing her of adultery'.[928]

[The arbiter then says: 'I have declared both of you separated from one another']. The child is mentioned if included in the <u>li'an</u>.[929] If the man says: 'I bear witness before Allah that she has committed adultery', he should say in addition, 'and this child is not mine'. She should say: 'I bear witness before Allah that he has told a lie and that this child is his'. If he pronounces the <u>li'an</u> and she refuses to do so she is not liable to <u>hadd</u>[930] and their marriage is still good. The case is the same if she makes less than four confessions.

36. Concerning 'Iddah

36.1

He said: If a man divorces his wife after spending time alone with her, she must undergo 'iddah for three menstrual cycles exclusive of the cycle in which she is pronounced divorced. When she takes her ritual bath after completing the third menstrual cycle she becomes lawful to marry.[931] In the case of a female slave she becomes lawful for marriage after her ritual bath when the second menstrual cycle has been completed. For such woman who has no expectation of menstruation along with those who have not commenced menstruation, their 'iddah is three months. As for the female slave (in such cases) her 'iddah is two months.[932] A female slave who is manumitted before he 'iddah is over completes the 'iddah as a free woman if she is divorced in a state in which the husband can return to her. If she is manumitted before her 'iddah is over she completes the 'iddah as a slave if divorced in a state in which the husband cannot return to her.[933] If a (free) woman who has menstruated is divorced, and then her bleeding ceases but she does not know what has caused it to cease, her 'iddah (in such a case) is one year.[934] If she is a female slave her 'iddah (in such a case) is eleven months, nine months waiting period in case she is pregnant and two months for

the (actual) *ʿiddah*. If what has caused the bleeding to cease is known to her then she should continue to stay in her *ʿiddah* until the bleeding resumes and then completes the *ʿiddah* based on a monthly cycle, unless she has become a woman who has no expectation of menstruation in which case her *ʿiddah* is carried out for three months since the time she has no expectation of menstruation. If after bleeding once or twice the bleeding ceases and the cause of its cessation is not known to her, her *ʿiddah* ends only after a year has passed from the cessation of the bleeding.

If one who has not commenced menstruation is divorced, and if before completing her *ʿiddah* of three months she starts bleeding, she must resume her *ʿiddah* based on three menstrual cycles in the case of a free woman, and based on two menstrual cycles in the case of a slave. In the event of death of a free man or a slave before or after the marriage is consummated the wife must undergo *ʿiddah* for exactly four months and ten days in the case of a free woman and for exactly two months and five days in the case of a slave. If divorced or widowed in the state of pregnancy, her *ʿiddah* ends only after she has delivered the child regardless of whether she is a free woman or a slave. The type of pregnancy that requires *ʿiddah* is that in which there is any evidence of the creation of human life regardless of whether the pregnant woman is a slave or a free woman.

He said: If after she is divorced or after her husband's death she does not marry until a child is delivered by her after four years[935] since the time she has been divorced or after the death of her previous husband, the child is attached to the previous husband and the woman's *ʿiddah* is considered over. If after she is divorced or after her husband's death, she has not completed her *ʿiddah* before marrying another man who has sexual intercourse with her, both are separated from one another and then she completes her *ʿiddah* for the first husband before resuming her *ʿiddah* for the second husband who can marry her after the two *ʿiddah*s have been completed.[936] If she delivers a child that can be attached to either of the two men, the child is shown to physiognomists and then assigned to one of them based on the decision of the physiognomists, and her *ʿiddah* for him is considered over, and then after that she carries out the *iddah* for the other man. If the master of an *umm al-walad* dies, she cannot marry any man until she has undergone one complete menstrual cycle.[937] In the case of a woman who has no expectation of menstruation she must wait for three months.[938] If the bleeding ceases and the cause of its cessation is not known, she carries out the *ʿiddah* for nine months in case she is pregnant and for another month in place of a menstrual cycle.[939] If the *umm al-walad* is pregnant by her master her *ʿiddah* ends after the child's delivery.

If a man manumits his umm al-walad or a female slave with whom he has been having sexual intercourse, she cannot marry any other man until she has undergone one complete monthly cycle. Similarly, if he intends to marry her to another man while she is still owned by him he can not do so until she has been cleared (from pregnancy) by letting her undergo one menstrual cycle.[940] It is unlawful for a man who becomes the owner of a female slave to have sexual intercourse with her or kiss her until she is cleared (from pregnancy) after claiming full ownership of her by letting her undergo one menstrual cycle if she is a menstruating woman or by allowing her to deliver the child if she is pregnant or by waiting for three months to pass by if she is a woman who has no expectation of menstruation or who cannot have menses.

He said: A woman whose husband is dead must avoid using perfume, ornaments, spending the night in a house other than her home, coloring the edges of the eyelids with kohl and veiling the face. [If necessary, she must veil her face until her ʿiddah is completed just as the female muhrim does (during hajj)]. A woman divorced three times must guard against the use of perfume and coloring the edges of the eyelids with kohl.[941] If after leaving for hajj she learns of her husband's death while close to home she may return home to carry out the ʿiddah. If already far from home she may continue her journey. If after she has returned home

there is still some time left for the 'iddah it must be completed in her home. If her husband dies or divorces her while he is far away from her, her 'iddah starts from the day of her husband's death or the day he divorced her, when this fact becomes known to her even if she has been unable to avoid those things which ought to be avoided by a woman performing the 'iddah (Mu'taddah).

37. Foster Relationship

37.1

He said: Five or more occasions of suckling undoubtedly make marriage unlawful.[942] Feeding through the nose is treated the same as suckling, and so is the case with pouring the milk into the mouth.[943] Adulterated milk is considered the same as unadulterated (in these terms).[944]

Just as the milk of a living woman makes marriage unlawful, the milk from a dead woman also makes marriage unlawful because milk is not considered as dead.[945] If a woman is pregnant by a person to whom parentage of the child can be attached, and she gains some milk with which she suckles a male child five different times within two years (from the child's birth) she becomes unlawful to the suckled child[946] and so are her daughters by the father of this pregnant child and by others too, and so also are the daughters of the father of this pregnant child by her and as

well as by other wives. If she suckles a female child, the suckled child becomes her daughter as well as her husband's because the milk (used to suckle the child) is the result of the pregnancy which is the man's.

If a man divorces his wife three times while she is breast-feeding his baby, and she marries an infant child whom she suckles hence becoming unlawful to him, and then marries another man who consummates her marriage after which he divorces her or dies, it is not permissible for the first man to remarry her because she has entered into the category of his son's wife since she suckled a child she was married to. If a man is married to a little girl and an adult woman and if before the marriage with the adult wife is consummated she suckles the little girl (within two years from her birth) the adult wife becomes unlawful to him, while the minor's marriage stands firm.[947] If he has already consummated the marriage of the adult wife, both of them become unlawful to him, in which case he claims half of the little girl's marriage portion from the adult woman. If he is married to an adult woman [whose marriage has not been consummated], and he is also married to two little girls and if the adult wife suckles the two little girls then the adult wife becomes unlawful to him and the marriages of the two little girls are void and no marriage portion is due to the adult wife, and also half of the marriage portion of the two little girls is claimed from her. However, the man can

desirably marry any one of the two girls (later on).

If three little girls are married to him (beside the adult wife) and if the adult wife suckles them all at different times, she becomes unlawful to him and the marriage of the first two little girls are void while the marriage of the latest of them to be suckled stands firm. If one of them is suckled separately and the two are suckled together afterwards, the adult wife becomes unlawful to him while the marriages of the little girls are void and the man can desirably marry any one of the girls (later on). If he has already consummated the marriage of the adult wife, all of them become unlawful to him forever.

He said: If only one woman testifies to the suckling of a child it is considered good enough to make marriage unlawful (between two people) provided she is reliable. In another place,[948] Abu 'Abd-Allah said: 'She must take an oath as well if she is reliable. If she lies, her breasts turn white before a year passes by'. Concerning that, he goes with what has been said by Ibn 'Abbas[949] -may Allah be pleased with him.

If after marrying a woman and before the marriage is consummated the man says to his wife: 'She is my foster-sister', the marriage is void. She is not entitled to marriage portion if she confirms it. Half of the marriage portion goes to her if she denies it. If it is the woman who says to her husband: 'He is my foster brother',

and he accuses her of lying while she does not present evidence to support what she describes him to be, she is still legally considered his wife.[950] Allah knows best.

38. Providing Maintenance to Close Relatives

38.1

He said: The husband must provide maintenance for his wife's necessities and to clothe her. If she is refused her full right or a part of it and she is able to gain access to her husband's wealth, she has the right to withdraw whatever is needed from it in (all) fairness, as according to what the Prophet -may the blessings and peace of Allah be upon him- said to Hind when she complained by saying: 'Abu Sufyan[951] is a miser who does not provide enough maintenance for me and my children', and the Prophet said: "Take (from his wealth) what is sufficient for you and your children in (all) fairness".[952] If she is refused and does not find anything to take and chooses to separate from her husband, the arbiter separates them.[953]

He said: A man is compelled to provide maintenance for his parents and for his male and female children, if they are poor and he has the means to provide for them. Also, if a child has no father, his heirs [both male(s) and female(s)] are obliged to provide maintenance for him (each) according to his or her share of inheritance. If the child

has a mother and grandfather, one-third of maintenance is provided by the mother and the grandfather provides two-thirds of it.[954] If (the child's nearest relatives are) the grandmother and the child's brother, the grandmother provides one-sixth of the maintenance and the rest (of five-sixths of it) is provided by the brother. Maintenance is calculated according to this principle. If a manumitted slave is poor, the manumitter must provide maintenance for him or her because the manumitter inherits from the manumitted.[955]

If a female slave marries, it is binding on her husband, or on her husband's master if the husband is a slave, to provide maintenance for her. If she is the kind of slave who spends the night with her husband and the day with her master, each of them must provide maintenance during the time she spends with each person. If she has children, her husband is not required to provide maintenance for the children regardless of whether her husband is free or a slave; their maintenance is the responsibility of their master. A male slave is not required to provide maintenance for his children whether his wife is free or a slave. The female mukatab must provide maintenance for her children, but the children's father who is also a mukatab is not required to do so. The mukatab must provide maintenance for his children from his female slave.

38.2 Situation in Which the Husband is Obliged to Provide Maintenance

He said: If a man marries a woman with whom sexual intercourse is possible and he has not been prevented by her or by her guardians (from having sexual intercourse with her) then she is entitled to maintenance. If she is in the situation I have described and her husband is a minor, the husband's guardian is obliged to provide maintenance for her out of the child's wealth.[956] If no wealth is available and the wife prefers separation from her husband, the arbiter separates them. If the husband demands consummation of the marriage, and the wife says: 'I will not surrender myself until I have received my marriage portion, she has the right to make that stipulation, and he must provide her maintenance until her marriage portion is paid.

If a man divorces his wife in a situation where he cannot return to her she is not entitled to accommodation or maintenance,[957] unless she is pregnant. If a woman seeks khul' divorce from her husband, and in return for it she frees him from responsibility of maintenance due because of the pregnancy, she and her child are not entitled to maintenance until she begins to wean the child. No maintenance is due to a woman disobedient (toward her husband). If she has a child with him, he must provide child maintenance to her.[958] Allah knows best.

38.3 Who is Most Entitled to Custody of the Child

He said: The most entitled to custody of the child (whether sane) or insane is the child's mother if she is divorced. When a male child is seven years old he is made to choose between his two parents and lives with the one chosen.[959] When a female child is seven years old, her father is more entitled to her custody.[960] If the mother is not available for custody of the child or if she is married to another man, the father's mother is more entitled to custody than the maternal aunt, and the consanguine sister is more entitled to custody of the child than the uterine sister[961] and also more entitled than the maternal aunt, and the maternal aunt of the father is more entitled to it than the maternal aunt of the mother.

If a child is taken away from the mother because she has married another man, she regains her right to custody of the child if she is divorced later on by that man. If a woman marries, her husband has the right to stop her from breast-feeding her child (by another man) unless it is necessary for her to do so and there is fear for the life of the child. The father must look for someone to breast-feed his child unless the mother prefers to do it in return for equivalent wages for someone similarly hired to do it, in which case she becomes more entitled to breast-feed the child than other women regardless of whether she is under the ties of marriage or divorced.

38.4 Provision of Maintenance for Slaves

He said: Slave owners must provide maintenance for their slaves and clothe them appropriately and arrange marriage[962] for the slave if he or she needs it. If the owner refuses to do so he or she is compelled to sell the slave to another person at the request of the slave. The slave owner must provide maintenance for his or her pawned slave.

He said: It is not permissible for the slave owner to require the female slave to breast-feed a child other than her own unless she has more milk than is needed to feed her child.

He said: The slave owner is not required to provide maintenance for his mukatab unless the mukatab is incapable of redeeming himself (or herself).

He said: Any person who brings a runaway slave back to the owner is entitled to reimbursement for what is spent on that slave.[963] Allah knows best.

39. Crimes of Violence

39.1

He said: There are three ways of causing death: with intent, (i.e. murder) with apparent intent, (i.e manslaughter), and by accident.[964]

Intentional killing is when a person is hit with a

piece of iron or a large piece of wood greater than a tent pole or with a large stone, big enough to cause death in a majority of cases, or if hit repeatedly with a piece of wood, or if anything is done to a person which will usually cause loss of life. The murderer is subject to retaliation (qawad)[965] if all the next of kin (walis) unanimously demand it and provided the person killed is free and a Muslim.

Killing with apparent intent is when a person is hit with a small piece of wood or a small stone, or struck with the fist or if anything is done to a person which usually does not kill. There is no retaliation in this case, but blood money (diyah) is required from the aqilah.[966]

There are two kinds of accidental killing. One kind is when a person hunts game or does something permissible and it results eventually in the loss of life of a free Muslim or a non-Muslim in which case payment of blood money is required from the aqilah, and the killer is required to (carry out kaffarah by) manumitting a believing slave.

The other kind is when a person kills in Byzantine territory[967] another person thought to be a non-Muslim when he or she has already become a Muslim and has kept it secret until able to escape to a Muslim territory, in which case the killer must manumit a believing slave, and no payment of blood money is necessary[968] because of what Allah, the Most Exalted said: "If he (the victim) be of a people hostile to you and he is a believer, then (the penance is) to set free

a believing slave".[969]

A Muslim cannot be put to death for killing a non-Muslim[970] nor a free person put to death for killing a slave.[971] A non-Muslim who kills a [Muslim] slave intentionally must pay what the slave is worth. The non-Muslim is put to death for breaking the (peace) treaty.

He said: The father cannot be put to death for killing his child, however far down in descent.[972] The mother and the father are both treated the same in this case.[973] The child may be put to death for killing either of his or her parents.[974] However, a minor or an insane person cannot be put tc death for killing any person. A group of people may be put to death for killing one person.[975] If a person's hand is cut, the same hand of each one in the group is cut (in retaliation).[976] If a child is killed intentionally by the father and another person, only the latter is put to death.[977] If a child and an insane person and an adult participate in a murder, none of them is subject to retaliation.[978] The sane one among them must pay one-third of the blood money from his or her wealth, and the aqilah responsible for the child and for the insane one pays one-third of the blood money and two slaves are also set free from their wealth, because intentional killing for them is considered (equivalent to) killing by accident.

He said: A male is put to death for killing a female, and a female is put to death for killing a male. Two people

either of whom may be killed for committing murder are also subject to retaliation for bodily injury.[979] If a person is killed by two men one by accident and the other with intent, no retaliation is binding on either of them.[980] The person killing by intent must pay half of the blood money from his wealth, and the aqilah responsible for the person who killed by accident also pays half of the blood money and this latter person is required to (carry out kaffarah by) setting free a believing slave at his own expense.

He said: The blood money for a slave is what he or she is worth even if the slave is worth several amounts of blood money.[981]

39.2 Retaliation

He said: If a person is stabbed in the stomach and the innards removed and then severed, and then the victim is beheaded by another person, the first person is considered the killer. If he is stabbed in the stomach and then beheaded by another person, the second person is considered the killer; because in the first case the victim does not (normally) survive, while in the second case, it is possible for the person to be still alive (after begin stabbed). A person who cuts off another person's hands and legs and then beheads him or her before the wounds heal up is also put to death without having the hands and legs cut off, according to one of the two reports related from Abu 'Abd-Allah.[982]

According to the other report, he said: The person deserves to be treated as according to what he has done.[983] If forgiven by the victim's next of kin (wali), the person is liable to one payment of blood money. If the wounds heal up before the victim is killed, the forgiven killer is liable to three payments of blood money unless the victim's next of kin decide to retaliate in which case they have the right to retaliate and to receive two payments of blood money from the killer's wealth.

If a Muslim shoots an arrow at a non-Muslim [slave][984] who is then set free and becomes a Muslim before the arrow reaches him, the archer is not subject to retaliation,[985] but the archer must pay the blood money of a free Muslim if the victim dies from the shot. If a man kills two people one after the other and if the next of kin of both victims decide to retaliate, they are allowed to claim qawad for both. If the next of kin for the first victim demands retaliation while that of the second victim demands blood money, the man is put to death to satisfy the retaliation demand for the first victim, and blood money from the man's wealth is paid to the next of kin of the second victim.[986] The case is the same if blood money is demanded by the next of kin of the first victim while the next of kin of the second victim demand retaliation. A person who wounds another person is wounded in return if it is possible to do so without causing injustice. Also, if a person cuts off

another person's limb, the same limb is cut off in retaliation provided the person who commits the crime can be put to death for murdering the victim.

There is no retaliation for a skull fracture or abdominal wound. An ear may be cut off for cutting another person's ear, a nose for a nose, a penis for a penis testicles for testicles. A person's eye may be put out for putting out another person's eye, likewise a tooth may be pulled out for pulling out another person's tooth. If part of the tooth is broken by a person, the same part of the offender's tooth is cut with a file. The right (limb) cannot be cut off in retaliation for cutting another person's left (limb), nor the left (limb) for the right one. If a man with healthy limbs (hands or feet) cuts off paralyzed hands or feet, there is no retaliation. On the other hand, if a man with paralyzed hands or feet cuts off healthy limbs (hands or feet), then the person whose hand has been cut off has no further right if so desired to have the other person's paralyzed hand cut off. If it is desired the victim may forgive and (only) accept blood money for the amputated hand.

If a murder victim has two next of kin, one adult and the other a child or someone absent, the murderer cannot be put to death until the absent person arrives or until the child becomes an adult.[987] Retaliation cannot be carried out if it is excused by one of the victim's next of kin even if

it is the husband or the wife who excuses the crime.

If a group participates in a murder, the victim's next of kin have the right, if so desired, to put to death all those who participated. They also have the right if so desired to put some of them to death, forgive some others and to accept blood money from the rest of them.[988] The next of kin have the right to accept from a murderer liable to retaliation more blood money than they are entitled to in order to forgo retaliation. If someone is held and killed by another person, the murderer is put to death and the holder is detained for life.[989]

If a slave is ordered by his master to kill a man while the slave is a non-Arab[990] who is not aware that killing is forbidden, the slave's master is put to death. If aware of the danger of killing, the slave is put to death and the master is disciplined.[991] Allah knows best.

40. Blood Money for Taking Life

40.1

He said: The blood money for killing a free Muslim is to pay one hundred camels.[992] If the killing is intentional, it is paid from the murderer's property with immediate effect and in four installments: twenty-five female camels in their second year, twenty-five female camels in their third year, twenty-five female camels in their fourth year,

and twenty-five female camels in their fifth year. If it is an apparently intentional killing, the ages of the camels are the same as I have described, except that the blood money (in this case) is payable by the aqilah, one-third of which is to be paid every year for three years.[993]

If the killing is by accident, one hundred camels are payable by the aqilah within three years in five installments: twenty female camels in their second year; twenty male camels in their second year; twenty female camels in their third year; twenty female camels in their fourth year; and twenty female camels in their fifth year.

He said: The aqilah is not responsible for death caused by a slave,[994] or for intentional killing, or for a peaceful settlement made (by the murderer) or for making a confession or for (the payment of blood money of) less than one-third.[995] If a crime is committed by a slave, it rests on the owner to either redeem or give up the slave. If the crime committed requires payment of more than what the slave is worth, the owner is only required to redeem the slave according to what he or she is worth.[996]

He said: The aqilah consists of the paternal uncles and their children however far down in descent according to one of two reports.[997] According to the other report, the aqilah consists of the father, son, brothers and every agnatic heir.[998] The poor, <women> minors and the insane among the aqilah are not responsible for payment of blood money.

Payment of blood money for a person who does not have aqilah is made from the public treasury (bayt al-mal).[999] If that is not possible, then nothing is binding on the murderer.

The blood money for killing a free person of the People of the Scripture is the payment of half the blood money for killing a free Muslim.[1000] The blood money for killing their women is the payment of half what is paid for their men. If the People of the Scripture are killed intentionally, the Muslim murderer must pay double the blood money so as to put an end to retaliation, [according to the judgment passed by 'Uthman bin 'Affan -may Allah be pleased with him].[1001]

The blood money for killing a Zoroastrian is the payment of eight hundred dirhams[1002] and for killing their women is the payment of half of it. The blood money for killing a free female Muslim is the payment of half what is paid for a free male Muslim. What is due for the injury of a woman is the same as for the man up to the value of one-third of blood money. If it goes beyond one-third (of blood money) then payment for the woman is half what is paid for a man's injury.[1003] The blood money for killing a male or a female slave is the same as what each of them is worth regardless of how much.[1004]

The blood money for a fetus in the case of a miscarriage caused by someone who strikes a pregnant free Muslim woman is the payment of a male or a female slave that is worth five camels (ghurrah)[1005] considered as inherited

from the fetus who is treated like a living being that has been delivered dead. One-tenth of what the mother is worth is paid as blood money if the fetus is a slave regardless of whether the fetus is male or female.[1006] If a pregnant woman is struck in the stomach causing her to drop the fetus alive followed by the death of the fetus as a result of being struck, the payment of blood money of a free person is required if the fetus is free, or payment of what the fetus is worth is required if the fetus is a slave and sufficiently developed - six months and more - to have survived (under normal conditions). Every person responsible for striking the pregnant woman according to what I have mentioned is also liable to (kaffarah by) setting free a believing slave regardless of whether the fetus is dropped alive or dead.[1007]

If a pregnant woman drinks a medicine (to deliberately terminate her pregnancy) and so aborts the child, she is liable to payment of indemnity for causing an abortion (ghurrah), none of which she may inherit. She is also liable to setting a slave free.

If three people catapult a stone which backfires and kills a man, the aqilah responsible for each of the three people is liable to payment of one-third of the blood money and each of the three people must set free a believing slave. If there are more than three people (involved in the death of the man) then blood money is paid out of their

property.

40.2 Blood Money for Injuries

He said: Blood money is required for causing the loss of any single part of the human body. But if it occurs in pairs, half the blood money is paid for each.

He said: Blood money is required for causing the loss of both eyes. It is also required for the loss of the four (outer) edges of the eyelids. There is one-fourth blood money for each of them.[1008] Blood money is required for the loss of both ears and it is also required for causing hearing loss. It is required also for causing bald-headedness if no new hairs re-grow. Blood money is required for causing loss of the eyebrows if (new) hairs do not re-grow. It is also required for the loss of beard if it does not re-grow.[1009] Also, it is required for causing the loss of sense of smell. Payment of blood money is required for the loss of two lips and also for the loss of a tongue capable of being used for speech. Each tooth pulled out from a person who can no longer grow new teeth requires payment of five camels. Molars and canines are treated the same as other teeth. Blood money is required for the loss of both hands and so also for the loss of both breasts whether of the male or female. Blood money is required for causing damage to the penis and likewise the testicles. Blood money is required for causing damage to the buttocks

and likewise the feet. The loss of each finger or toe requires payment of ten camels. Damage to each finger tip requires payment of one-third of what is due for a finger except for the thumb which consists of two joints each of which requires payment of five camels.

If the stomach is struck to the point that it can no longer retain excrement, blood money is required. Blood money is required for causing loss of mind. It is also required for distorting another person's face[1010] - that is to strike someone's face so as to deform it. If damage is caused to the bladder to the point that it can no longer hold urine, blood money is required. One-third of what is due for damaging a person's hand is required if the hand is rendered paralyzed, and so is the case if a person's eye is rendered sightless or if a tooth is darkened.[1011] [What is due for causing damage to the whole penis is also due for damaging the glans of the penis]. Blood money is required for causing damage to the labia of the woman's vagina.

Five camels are required for a fracture of a free man or woman which exposes the bone and renders it visible (mudihah). [What is due for the injury of a woman is the same as for the man up to the value of one-third (of blood money), or half if the injury requires payment of more than one-third of blood money].[1012] Fractures that expose the bone [and render it visible] require the same payment for the face and head. A fracture that renders the bone visible

and also shatters it (hashimah) requires payment of ten camels. A fracture that exposes, shatters and so violently affects the bone that it is displaced (munaqqilah) requires payment of fifteen camels. The fracture that reaches the membrane of the brain (ma'mumah) requires payment of one-third of blood money. Ammah and ma'mumah are the same.[1013] A fracture that reaches the interior of the body (ja'ifah) requires payment of one-third of blood money. If an internal wound reaches the other part (of the body) it is considered two fractures.

If a man has sexual intercourse with his minor wife and causes a hernia, he must pay one-third of blood money.[1014] Damage to a person's rib requires payment of one camel. Two camels are required for causing damage to the collarbone. Four camels are required for damaging the ulna because it consists of two bones.[1015]

Abu 'Abd-Allah -may Allah have mercy on him- said: Skull fractures that have no fixed blood money are as follows: First, the harisah or harsah, a fracture that breaks the skin [that is, it splits it a little, then the badi'ah, a fracture that breaks open the flesh below the skin, then the badhilah, an injury which causes blood to flow, then the mutalahimah, an injury that breaks open the flesh. Then the simhaq (periosteum), a membrane between which and the bone is a thin scab, and then the mudihah, (a fracture that exposes the bone)].[1016]

He said: If an injury has no fixed blood money and cannot be compared to one which has, then estimation (hukumah)[1017] is necessary. That is, to calculate as if the victim (of an injury) were an uninjured slave and then re-calculate as if he were healed, and the difference between the two is what is paid as blood money, for example if the value of the victim as a healthy slave is ten (dinars) and the value as a victim of injury is nine (dinars) then one-tenth blood money (of such a person) is what is required for that injury. This method is used for estimating any increase or decrease in value unless the wound is to the head or face in which case it is equalized with that which has a fixed value, hence its value cannot exceed the blood money of that which has a fixed value. If an injury is caused on a slave for which no fixed blood money is assigned (for injury) to a free person, then the loss of value of the slave after the wound has healed is to be paid (as compensation). If it is an injury that has a fixed blood money for (injury to) a free person, then that fixed blood money is what is due for the slave. Half what the slave is worth is required for causing injury to his hand. In the case of an injury in which the bone is exposed, one-twentieth of what he is worth is required regardless of whether he has lost value through the injury or gained. The case is the same for a female slave. If a hermaphrodite of indeterminate sex is a victim of murder,

payment of half the blood money of a male and half the blood money of a female is required.[1018] If one-half of a victim of a crime is free, there is no putting to death of the criminal. For intentional killing, the criminal must pay half of a free person's blood money and half of the value (of the victim as a half-slave). Likewise, in the case of an injury. If the killing is accidental, the person responsible must pay half of what he or she is worth, and the aqilah is responsible for half of the blood money.

40.3 Qasamah[1019]

He said: If the next of kin (walis) of a murder victim accuse a (particular) people (of the murder) while there is neither animosity [nor malice][1020] between them, and no evidence is presented, then no ruling can be made in the accusers' favor through the taking of an oath or any other thing.[1021] If animosity and malice exist between them, and one of the people is accused by the victim's next of kin [while the charge is denied by the accused, and if the victim's next of kin have no evidence] they are required to take an oath fifty times against the accused killer in order to claim his or her blood, provided the accusation is of murder. If the victim's next of kin refuse to take the oath, the accused takes it fifty times and becomes acquitted.[1022] If the victim's next of kin refuse to take the oath and also to allow the accused to take it, the Imam

redeems the accused (by paying the blood money) from the public treasury. If there is cogent evidence to prove that the wounded has said: 'such and such a person is the cause of my death', that is no reason for demanding qasamah if no malice exists between them.[1023]

He said: Women and children[1024] do not perform qasamah. If the victim is survived by three sons the oath is divided among them,[1025] hence, each of them swears seventeen times regardless of whether the victim is Muslim or non-Muslim, free or slave,[1026] provided the accused can be put to death for murdering the victim if found guilty of murder, because qasamah requires retaliation unless the victim's next of kin wish to accept blood money. The next of kin cannot perform qasamah against more than one person.

He said: If a person accidentally takes another person's life which Allah has forbidden[1027] or participates in taking it or strikes at a woman's stomach [whether she is free or a slave] causing her to miscarry the fetus, the person must set free a believing slave,[1028] or if this is not possible then he must fast two consecutive months as a penance from Allah the Almighty and Most Exalted. Another report was related from Abu 'Abd-Allah that the murderer must also set free a believing slave.

He said: Only two reliable men (as witnesses) can be accepted for what requires retaliation (in relation to blood and injuries), but in the case of crimes which require

monetary compensation without retaliation the testimony of a man and two women may be accepted or the testimony of a man of probity corroborated by the oath of the claimant.[1029]

40.4 Fighting Rebels[1030]

He said: If the Muslims agree on an Imam and any of them who rebels and tries to take the Imam's position must be fought and removed with the smallest possible force. If this results in the death of any rebels, the defender is not held responsible. If the defender is killed he dies a martyr. Once the rebels have been driven off their ringleader should not be pursued, the wounded among them should not be finished off, the captives should not be killed, their wealth should not be taken as booty, and their offspring should not be taken as prisoners. Any person killed among them must be washed, shrouded and prayed over.[1031] Any zakah or kharaj collected by them at the time of their rebellion cannot be recovered. The passing of a sentence by their judge can not be reversed except what may be reversed of other than their Judge's sentence.[1032]

41. The Apostate

41.1

He said: A man or a woman who apostatizes from Islam while in full possession of mental faculties and is an adult, is urged and constrained [for three days] to return to Islam. If he returns (all well and good) otherwise the person shall be put to death[1033] and the property after settling his debts is considered as fay'.[1034]

Also, a person who omits the prayer is urged for three days to perform it. If it is performed all well and good, otherwise the person shall be put to death regardless of whether or not he denies the prayer. It is unlawful to eat the meat of an animal slaughtered by an apostate even if the person has reverted to the religion of the People of the Scripture. A ten year old child who accepts Islam based on understanding what Islam is, is considered a Muslim.[1035] If the child turns back and says: 'I was not aware of what I said' no attention is paid to his statement.[1036] He is compelled (instead) to practice Islam and cannot be put to death until he has become an adult and has passed three days after which time he shall be put to death if he insists on being a non-Muslim. If a husband and wife both apostatize (from Islam) and then escape to the enemy territory (da al-harb),[1037] slavery cannot be inflicted on them or any of their children born to them before the apostasy. Any one of

them or of their adult children described who refuses to practice Islam must return to Islam within three days otherwise the person shall be put to death. Minors follow either of their parents who accepts Islam.[1038] Also, an infant is entitled to a share of inheritance if a parent who is a non-Muslim dies. Moreover, the child is considered a Muslim upon the death of either of them.[1039] If testimony is made against a person accused of apostasy, and the person says: 'I have not become non-Muslim', and then bears witness that there is no god but Allah and that Muhammad is the Messenger of Allah, nothing is disclosed (about the accused). A person who apostatizes in the state of intoxication can not be put to death until sober and three days have passed by since the time of apostatizing. If that person dies while intoxicated, he or she will be considered a non-Muslim.[1040]

42. Various Type of Hadd

42.1

He said: If adultery is committed by a man or woman, free and muhsan[1041] (or muhsanah), they are both flogged and then stoned to death[1042] according to one of two reports related by Abu 'Abd-Allah -may Allah have mercy on him. According to another report, they should be stoned to death without flogging.[1043] They are washed, shrouded, prayed

over[1044] and then buried. A virgin free man who commits fornication is flogged one hundred times and then banished for one year,[1045] [likewise the woman]. Each male or female slave who commits fornication is flogged fifty times[1046] but not banished.[1047] The <u>zani</u> is one who commits unlawful sexual intercourse whether genitally or anally. A person involved in sodomy is put to death whether virgin or non-virgin according to one of two reports. According to another report, the sodomite is treated the same as the <u>zani</u>.[1048] Any person who has relations with an animal is subjected to a fitting disciplinary action and the animal is killed.[1049]

<u>Hadd</u> is necessary if unlawful intercourse is confessed four times[1050] by any person mentioned above who is an adult, of sound and sane mind, and as long as the confession is not withdrawn before the <u>hadd</u> is carried out, or until it is testified against the person, confirmed by a complete description of <u>zina</u> from four Muslim, free and trustworthy men. If on the basis of confession, a person would be stoned, the stoning is discontinued if the confession is withdrawn before the person is put to death. Also, the flogging is discontinued and the person set free if the confession is withdrawn before the completion of the <u>hadd</u>. If the <u>hadd</u> has not been carried out on a person who has committed <u>zina</u> several times, such a person is liable to one <u>hadd</u>.

If dhimmis appeal to us for a judgment then we must judge them according to the judgment of Allah the Almighty and Most Exalted. A free adult [in full possession of his mental faculties] who falsely accuses a free Muslim male or female of committing zina and has no evidence, is scourged with eighty stripes as hadd if it is demanded by the person slandered. The slanderer, if a male or female slave, is scourged with forty stripes using the lightest whip of the kind used to scourge the free person. If a person says to another: 'You sodomite', the slanderer is asked to explain what is meant by that. If the explanation is: 'I mean you belong to the people of Lot' then the slanderer is not liable to any punishment.[1051] If the explanation is: 'By that, I mean you practice sodomy', then the slanderer is treated like one who has falsely accused another person of zina.[1052] The case is the same if a person says to another person: 'You child molester'. If after a man has been slandered and before the hadd is carried out on the slanderer zina is committed by the person slandered, the slanderer is still liable to hadd.[1053] Any person who slanders a slave or a polytheist or a male Muslim under the age of ten or a female Muslim under the age of nine, is subject to discipline and not liable to hadd.

If a person slanders another person who used to be a polytheist and says: 'I mean he committed zina when he was polytheist,' the explanation is ignored and the slanderer is

liable to *hadd* if the accused demands it. The case is the same if the person slandered is a slave.

He said: A person who slanders the *mula'anah*[1054] is liable to *hadd*. The child of a slandered woman has no right to demand *hadd* (on behalf of the mother) if the mother is alive. <The slanderer of another person's deceased mother, regardless of whether she was Muslim or non-Muslim, freed or a slave, is liable to *hadd* if it is demanded by her free Muslim son.>[1055] Whosoever slanders the mother of the Prophet -may the blessings and peace of Allah be upon him- shall be put to death regardless of whether the slanderer is a Muslim or a non-Muslim.[1056] If by one statement, a group of people is slandered, the slanderer is liable to one *hadd*, if it is demanded by all or one of them.[1057] If <murder is committed or> anything punishable by *hadd* is committed outside of the *Haram* and the person escapes to the *Haram*, nothing is sold to or purchased from the person until after leaving the *Haram* after which time *hadd* is executed on the person. If a person commits a murder or commits that which is punishable by *hadd* within the *Haram*, *hadd* is executed on the person within the *Haram*.[1058] Allah knows best.

43. Amputation for Stealing

43.1

He said: If one-quarter *dinar* of gold is stolen or

three dirhams of silver or anything that is worth three dirhams whether food or not and provided it is removed from a safe place, the thief's hand is amputated, unless what is stolen is a fruit or a pith of a palm tree in which case no amputation is required. In the first instance, the thief's right hand is amputated from the joint of the palm of the hand and then cauterized. If the stealing is repeated, the thief's left foot is amputated from the joint of the ankle and then cauterized. If the stealing is further repeated, the thief is imprisoned and nothing more is amputated beside a hand and a foot.[1059] The case is the same whether with a free man or woman or whether with a male slave or a female slave. A thief's hand is amputated even if what is stolen is offered to him as a gift after it has been removed (from a safe place).[1060] If anything removed from a safe place is worth three dirhams and then its value falls prior to amputating the hand, the hand is still amputated.[1061] After the amputation is carried out, and if what was stolen, is available, it is returned to its owner. If it has already been used up, the thief must pay its worth, whether financially able to do so or not.[1062] A grave-thief who steals a shroud that is worth three dirhams from a grave, is liable to amputation.[1063] A person's hand cannot be amputated for stealing an object of amusement or a forbidden object. The father's hand cannot be amputated for taking anything out of his child's wealth because he has only taken

what he has a right to take. Also, the mother's hand cannot be amputated for taking anything out of her child's wealth. A slave's hand cannot be amputated for stealing from his or her owner's wealth.

The thief's hand is amputated only on the testimony of two reliable witnesses or on the basis of two confessions made and not withdrawn before the amputation is carried out. If a group of people participate in stealing something worth three dirhams, they are all subjected to amputation.[1064] The thief's hand cannot be amputated even if a confession is made or evidence established, until the owner of the stolen object has come forward to demand the amputation.[1065] Allah knows best.

43.2 Highway Robbers[1066]

He said: Highwaymen are those who hold people up in the desert with weapons and openly rob them of their possessions.

He said: Any person among them who kills and plunders property must be killed, even if forgiven by the owner of the property, and must also be crucified[1067] until he is well exposed, and then turned over to his family. Any person among them who kills but does not plunder property is killed, but not crucified. If property is plundered without killing, the person's right hand is cut off, then the left foot at one and the same time, then they are both cauterized

and he is set free. Amputation is applied the same way as with stealing what requires it,[1068] and such people are subject to expulsion, that is to banish them and not allow them to live in any city. If they repent before they are overpowered, the hadd of Allah the Most Exalted lapses and they become liable for matters of rights between persons, such as murder, injury and property unless forgiven.[1069] Allah knows best.

43.3 Alcoholic and Other Beverages

He said: A person who drinks an intoxicant whether in little or great quantity is liable to hadd, to be scourged with eighty stripes if he has drunk it of his own free will,[1070] and being aware of the fact that drinking a great quantity will be intoxicating. In the event of death resulting from the scourging, the person is considered as legally put to death, and therefore no one is held liable for any payment. A man is scourged in all cases of hadd in the standing[1071] position with a scourge not too old or too new. He is neither stretched nor tied up. Care is taken not to hit the face. A woman is scourged in the sitting position. [Her clothes are tied on her][1072] and the hands held so as to prevent her from becoming unveiled. A male or female slave (in the above situation) is flogged forty times[1073] with a whip that is weaker than that used for the free person.

Juice that has been standing for three days is forbidden, unless it is fermented before that in which case it is considered forbidden. Likewise wine made from grapes.

He said: If wine is spoiled and then turned into vinegar it is still forbidden.[1074] If the nature of the wine is turned into vinegar by Allah, the Almighty and Most Exalted, it is considered lawful.

It is unlawful to drink from a golden or silver vessel. There is no objection to drinking from a different part of the drinking cup than where there is a silver mounting.

Ta'zir[1075] cannot be carried out to the full extent of hadd.[1076] If a person is attacked by a charging camel while unable to defend oneself except by hitting at the camel which then dies, the person is not liable to any payment.[1077]

If a man enters another's house with a weapon and the latter orders him to leave but he does not do so, the latter has the right to hit him with the simplest object that will cause him to leave. If a stick can turn away the person then it is not permissible to hit the person with a piece of iron. If the hitting results in the person's death, the occupant of the house is not responsible. If the occupant of the house is killed he dies a martyr.

A person must pay any part of a plantation destroyed at night by his livestock. Payment is not required for what is destroyed during the day.[1078]

The rider of an animal is liable to payment for damage

caused by the animal's fore legs, such as loss of life, injury and loss of property. The same applies to the herder or the animal driver.[1079] No payment is required for damage caused by the animal's hind legs.[1080] If two horsemen collide with one another resulting in the death of their two animals, each of them must pay the value of the other animal.[1081] If one of them is moving while the other is still [and the animals' lives are lost] the one moving must pay the value of the other animal.[1082] If two people walking collide with one another resulting in the death of both them, the aqilah of each of them must pay the blood-money of the other, [and a slave is set free for each of the two persons out of their own wealth].

If a ship travelling downstream runs into a ship going upstream causing both to sink, the ship running downstream must pay the value of the ship running upstream or the balance if both are recovered unless the ship running downstream has been overpowered by the wind causing it to lose control.

44. Jihad

44.1

He said: Jihad is an obligation based on the whole community,[1083] and if it is carried out by some people, then others are excused from fulfilling it. Ahmad -may Allah

have mercy on him- said: 'I know of no act after duties of a Muslim which is superior to Jihad. Naval actions are superior to land campaigns. Every pious and impious person may participate in a campaign. Each unit fights the enemy nearest to it. A complete tour of duty (rabat) is forty [nights].[1084] Voluntary Jihad cannot be performed without obtaining permission from one's Muslim parents. However, if a general Jihad is proclaimed, no permission is required from the parents. As in all religious obligations, parents need not to be obeyed in the failure to perform them.

He said: People of the Scripture and Zoroastrians may be fought against without calling them to Islam, because the call has already reached them. Idolaters must be called to Islam before being fought against. People of the Scripture and Zoroastrians are fought against until they either accept Islam or "pay the Jizyah1085 readily being brought low".[1086] Also other disbelievers are fought against till they accept Islam.[1087]

He said: The obligation on every man whether poor or wealthy if attacked by the enemy, is to march out. The enemy should not be attacked except with the permission of the amir[1088] unless the situation is such that the Muslims have been attacked unexpectedly by an overwhelming enemy of fearsome violence and it is impossible to obtain permission.

He said: Muslim men should not enter enemy territory accompanied by Muslim women, unless the woman is advanced in

years, for the purpose of supplying water and nursing the wounded as was permitted[1089] by the Prophet -may the blessings and peace of Allah be upon him. When the amir and the people are on a campaign, it is not permissible for any one to fodder an animal or gather firewood or to meet in a duel with an infidel, or to go out of the camp or to do anything except with the permission of the amir. The residue of what has been given to assist a person in a military expedition is returned to the donor, and if it is not donated for a specific expedition the residue is reapplied to the general campaign. An animal that carries a man to battle becomes his on his return unless it is declared a religious endowment (habis) in which case it cannot be sold except if it is in such a state that it can no longer be used for a military expedition, and then it may be sold and the money used for another endowment. Also, if a mosque becomes too small for the worshippers or it has been built in a place where it cannot be used for prayer, it is permissible to sell it and the money used to build another mosque in a place where it can be used. The case is the same if sacrificial animals are replaced by those of higher quality.

After taking captives, the Imam has the option of either having them killed or being lenient towards them, as he sees fit, by setting them free without accepting any compensation or to use them to ransom (captured persons) or

to free them in return for money to be paid by them, or to declare them slaves; whichever seems to him to be to the enemy's disadvantage and to the advantage of Muslims he should do. Those of the enemy who have been enslaved and anything received in return for their freedom are all treated as ghanimah. It is lawful to enslave them if they are of the People of the Scripture or Zoroastrians. Any other enemies, only Islam or death or ransom are accepted from their adult men.

He said: The Imam or his deputy may grant a warrior extra shares over the share due to him as was done[1090] by the Prophet -may the blessings and peace of Allah be upon him- who granted (a raiding party) one fourth (of the residue) after a fifth (of the total ghanimah had been taken out) for their raiding activity at the start of the fight, and granted on their return one-third (of residue) after one-fifth (of the total ghanimah had been taken out). The recipient of an extra share (of the war booty) shares with his fellow members of the raiding party because it is through their effort that he becomes entitled to it.

Anyone of us who kills an enemy who initiates the attack is entitled to the victim's possessions (salab) without having one-fifth of the booty deducted regardless of whether or not the Imam has made that stipulation.[1091] The mount and all its equipment are considered as part of the victim's possessions if killed on it. Also, all clothing

worn by the victim, weapons [and pieces of jewelry] <even in large quantity>.[1092] Money carried on him is not treated as part of the victim's possessions. According to another report[1093] related from Abu 'Abd-Allah -may Allah have mercy on him: Riding animals are not considered as part of the victim's possessions.

He said: If safe-conduct is given among us by a man or woman or a slave, it is valid.[1094] If safe conduct is requested in order to allow a fortress to be captured and it is done, and then later on each of those, in the fortress says: 'I was the person given safe-conduct' then none of them is killed.

If a horseman from among a military expedition enters enemy territory and his horse dies before ghanimah is acquired, he is given the share as a foot soldier. If he enters as a foot soldier and acquires the ghanimah as a horseman, he is entitled to the share of a horseman.[1095] He gets three shares: a share for himself and two shares for his horse,[1096] unless his horse is a half-bred horse, in which case he gets one share for himself and another share for his half-bred horse. He cannot get shares for more than two horses.[1097]

If a person goes to battle on a camel which is the only available animal, two shares are allotted to him and his camel. If a person dies after the ghanimah has been acquired, his inheritor receives his share instead.[1098] A

foot soldier is given one share. A woman or a slave gets a gift of nominal value. A non-Muslim who sides in a battle with the Muslims is given a share of the ghanimah.[1099] If a slave participates in a battle on his master's horse, a share of the ghanimah is allotted for the horse which goes to the slave-master, and the slave gets a gift of nominal value.[1100] If ghanimah is acquired, no share of it is allotted to any person who joins as a reinforcement or escapes from captivity.[1101] A person sent by the amir in the interest of the troops and who is unable to attend the distribution of the ghanimah, is allotted a share.

He said: If enemies are taken as prisoners of war, it is not permissible to separate the father and his child or the mother and her child. The grandfather is treated the same as the father, and the grandmother treated the same as the mother. It is not permissible to separate two brothers or two sisters.[1102] If two or more people are bought (out of the acquired ghanimah) under the impression that they are together and then it is proven they are not related, the buyer is required to pay back the amount fallen short of their values separately. Any of their (minor) children taken as prisoners of war whether alone or accompanied by one of the parents is considered as Muslim.[1103] Any of them taken as prisoners of war accompanied by their parents are considered as belonging to the religion of the parents.

Any Muslim property or slave recovered from the enemy

(ahl al-harb)[1104] and recognized by the owner before the distribution of the ghanimah is most rightly his. [If recognized after the distribution, the owner can most rightly claim them by the purchase price according to one of two reports. According to the other report, if it has already been distributed, it cannot be claimed at all].[1105]

Stone or wood cut from uncultivated[1106] enemy land or a fish or gazelle caught in it must be returned to the other troops if there is no need to eat or use them.[1107] A person who collects more fodder than is needed returns the surplus to other Muslims. If the surplus has already been sold, the income is put back in to the ghanimah. The troops and the portion of the army dispatched for a special mission (sariyyah) share with one another in the ghanimah gained by either group. The surplus food carried back to the (Islamic) city is added on to the ghanimah to be shared between the warriors according to one of two reports. [According to the other report, it may be eaten if it is a small amount of food.][1108]

He said: If a Muslim buys a captive from an enemy the captive is bound to reimburse the purchaser for what has been spent on him. If people who pay us jizyah are taken prisoners of war by polytheists and then later released, they are restored to their former status (as dhimmis) and not made slaves. Any slaves or property captured by the enemy are returned to them if recognized before they are

distributed. Payment of their ransom is also necessary after payment of ransom is made for Muslims. If ghanimah is placed under someone's care after the amir had gained control of it, it may not be eaten unless it becomes necessary to do so because nothing else is available.

He said: A person who buys a share of the ghanimah in the Byzantine territory and is then overpowered by the enemy, is not liable to payment of its price. The money is returned to the buyer if it has already been paid for.[1109]

He said: Fire should not be used in fighting the enemy, nor their date palms drowned[1110] nor their sheep or animals killed except for eating, if necessary.[1111] Their trees should not be cut down or their plants burnt unless they do the same in our land, in which case it is permissible to do it so they may cease.

He said: Marriage should not take place in the enemy's territory unless a person has been driven by sexual desire in which case a Muslim woman may be married and coitus interruptus performed with her. It is not permissible to marry the enemy. If a slave girl is bought from them, vaginal intercourse should not be entertained while in the enemy territory.

If enemy territory is entered with safe-conduct, it is unlawful to cheat its people concerning their property and to do business with them usuriously.

Those who have a treaty with the Muslims and break it

are to be fought against, and their men killed but their children are not taken as prisoners and not subjected to slavery except a child born after the treaty has been broken. A people hired by the amir to fight on the side of the Muslims and in the Muslims interest are not allotted a share (of the ghanimah) but rather paid according to what they are hired for.

He said: The entire saddlebag of a person who is withholding a ghanimah is subject to burning[1112] except the Qur'an (mushaf) and what has life. Hadd is not carried out on a Muslim in enemy territory.[1113] After capturing a fortress it is unlawful to kill a child therein who has not attained sexual maturity or grown pubic hair or has not attained the age of fifteen. Any of these (children) or women or monks or the elderly who participate in the fighting may be killed. If a captive among us is released under an oath to send the enemy something specific or to return to them and is unable to do so, he need not return. It is not permissible for a Muslim to flee from two non-Muslims. It is permissible to flee from three non-Muslims. The person should fight to the death if there is any fear of being taken captive.

He said: Whatever is received by a person hired to take care of an acquired ghanimah is lawful provided the person has not ridden (any animal from among the ghanimah) or provided it is the person's own animal that is ridden. If a

person meets an infidel and says: 'Stop or lay down your weapon', then protection is guaranteed. If some of the ghanimah is stolen by a person who is entitled to a share of it or whose child or master is entitled to it, the person's hand cannot be amputated. A person who has sexual intercourse with a female slave before the distribution of the ghanimah, is punished but not to the hadd of a person who has committed unlawful intercourse (zani)[1114] and also charged with the payment of a marriage portion equivalent to her worth, which is added on to the ghanimah unless a baby is born to him in which case he must pay whatever she is worth.

45. Jizyah

45.1

He said: Jizyah is accepted only from a Jew, a Christian or a Zoroastrian provided they abide by their treaty, but other people must accept Islam or face death.

There are three classes of people from whom jizyah is taken: Every man from among the lower class is charged twelve dirhams, and from the middle class twenty-four dirhams and from the wealthy class forty-eight dirhams.[1115]

Jizyah is not taken from a child or the insane or a woman or a poor person[1116] or a very old man, or one who is chronically ill or blind,[1117] or from a Muslim slave-master

on behalf of his slave. Jizyah can not be demanded from a person who accepts Islam before the jizyah is taken from him.[1118] A slave must pay future jizyah if manumitted, regardless of whether the manumitter is Muslim or non-Muslim.[1119] Jizyah is not taken from the Christians of Banu Taghlib.[1120] Zakah is taken out of their wealth, cattle and fruits, just as it is taken from the Muslims. According to one of two reports related from Abu 'Abd-Allah -may Allah have mercy on him- it is not lawful to eat their meat or to marry their women. According to the other report, their meat may be eaten and their women may be married.[1121] A dhimmi who [trades in][1122] another city is charged one-twentieth (of trade sales) every year.[1123] A merchant from the enemy territory who enters our land under a guarantee of protection is charged one-tenth.[1124] The blood or the property of a person who breaks a treaty by breaching an agreement between us is lawful. A dhimmi who runs away to the enemy territory after breaking a treaty is henceforth considered our enemy.

46. Hunting and Slaughtering

46.1

He said: If Allah's name is mentioned before sending a hound or a trained lynx which catches the prey, kills it and does not eat of it, it is lawful to eat it. [If the hound

or the lynx eats of the game then it is unlawful to eat it because it has caught the game for itself in which case it cannot be considered as a trained animal.] If a falcon or its like is sent to catch game animals and it kills it, it is lawful to eat even if it has eaten of the game because the falcon is trained only to eat. It is not lawful to eat what has been caught by an intensely black dog because it is considered as a devil.[1125] If game animals are found still alive and then die before they could be slaughtered, they are unlawful to eat. If a person cannot find anything to slaughter with, then it is lawful to eat the animal if a dog is set on it to kill it.[1126] If a hound which is sent to catch game animals is found with another dog, the game cannot be eaten unless still found alive, in which case, it has to be slaughtered (before it can be eaten). If Allah's name is mentioned before shooting at a particular game animal, and another one is hit instead, it is lawful to eat it. If game animals are shot and the arrow vanishes from sight and strikes the game dead, and then the arrow is found in it with no other signs (of injury), it is lawful to eat it.[1127] Game cannot be eaten if it falls into the water or dies by falling down a mountain after it has been shot. If one game animal is shot at and a number killed they all are considered lawful to eat. If by shooting the game animal, a limb is separated from it, it becomes unlawful to eat the limb.[1128] Anything else is lawful to eat according to one of

two reports related from Abu 'Abd-Allah -may Allah have mercy on him. According to the other report, it is lawful to eat everything including the separate limb.[1129] The case is the same if sickles are set up for game animals.[1130]

If a piece of wood with a sharp edge (m'irad) is used to kill game animals, it is lawful to eat what is killed with its sharp edge but not with its shaft. If game animals are shot and hamstrung by one person, and then shot and brought to a standstill by another person, and then shot and killed by a third person, the game is unlawful to eat, and its killer must pay its value in the wounded condition to the person who brings it to a standstill.

A fish that jumps up and then falls into the lap of a person aboard a ship goes to that person and not to the owner of the ship. It is unlawful to catch a fish with anything impure. Also, it is unlawful to eat game animals killed by an apostate or to eat an animal slaughtered by an apostate even if the religion of the People of the Scripture is professed.

If a person deliberately or out of forgetfulness omits Allah's name before the game is hunted, it cannot be eaten. If Allah's name is deliberately omitted before slaughtering the animal, it cannot be eaten;[1131] but it is lawful to eat it if it is omitted out of forgetfulness. If a camel that slips away cannot be caught and its owner shoots it with an arrow or a similar object that can cause blood to flow, and

it kills it, then it may be eaten.[1132] [Also, if the camel falls into a well making its slaughter impossible and is then wounded by its owner in any possible spot (causing it to die), it is lawful to eat it unless the head is found covered with water in which case it is unlawful to eat because water may have contributed to its death.][1133] The case is the same for a Muslim or the People of the Scripture in all that I have described. It is unlawful to eat what is killed with a rounded pebble (<u>bunduq</u>) or a stone, because it is considered equivalent to an animal killed by a falling object. It is unlawful to eat game animals killed by a Zoroastrian <and what is slaughtered by him> unless it is a fish which needs no slaughtering. Also are unlawful to eat all dead fishes in the water even if they are found floating on the surface of the water.

To slaughter game animals or cattle that can be brought under control, the gullet and throat are cut. It is recommended to slaughter a camel by <u>nahr</u> and for other cattle by <u>dhabh</u>.[1134] It is acceptable to slaughter by <u>dhabh</u> what is slaughtered by <u>nahr</u> or to slaughter by <u>nahr</u> what is slaughtered by <u>dhabh</u>. If a person slaughters an animal by cutting the vital organ and it still has a breath of life until it falls into the water or is trampled (to death) it is unlawful to eat it. If it is slaughtered by mistake from the back of the head, and while still having a breath of life the knife gets to the spot where the slaughtering is

usually carried out, then it is lawful to eat. The slaughter of the mother is considered as a slaughter for its unborn young one whether hairy or non-hairy.1135 No limb of what has been slaughtered should be removed until the animal is completely dead.

Slaughter by a capable Muslim or one of the People of the Scripture is lawful regardless of whether Allah's name is mentioned or omitted out of forgetfulness. A dumb person points to heaven. A person in a state of sexual impurity may mention Allah's name and then slaughter.

Forbidden animals are those specified by Allah the Almighty and Most Exalted in His Book.[1136] Also what the Arabs described as good is considered lawful, and what they described as foul is considered forbidden because of what (Allah the Most Exalted said: 'He will make lawful for them all good things and prohibit for them only the foul',[1137] and also according to the sunnah of the Messenger of Allah -may the blessings and peace of Allah be upon him- (he said): '(Forbidden to you are) domesticated donkeys and any wild animal with a canine tooth',[1138] and 'wild animals' denoting those animals which prey on others through the canine teeth and tear them apart. Also forbidden are birds with talons which grasp others by their talons and hunt with them.[1139]

A person driven by necessity to eat carrion must only eat the minimum of what can save him from death.[1140] A (hungry) person passing by a tree with fruit is allowed to

eat of it but not to carry it away. [If the tree is enclosed with a fence, he may only enter by permission.] A person driven by necessity should eat carrion found with bread whose owner is unknown. If only food is found and its owner refuses to sell it, it may be taken by force and its price paid to the owner, unless its owner is in the same necessity.

It is lawful to eat lizard[1141] or hyena[1142] but not to consume snake-flesh medicinal antidote (tiryaq)[1143] because it contains snake flesh. It is not permissible to eat the game animal shot by a poisonous arrow if the poison is known to have contributed to its death. A sea-animal that lives on land cannot be eaten if it dies on land or on sea. If an impurity drops into a liquid such as (cooking) oil and so on, it is rendered impure,[1144] it may be used for lighting[1145] if desired but cannot be eaten or sold.

47. Udhiyah[1146]

47.1

He said: Udhiyah is sunnah.[1147] It is not recommended that it be omitted by a person capable of offering it. If the offering of udhiyah is intended when it is the tenth (of Dhu'l-hijjah) nothing must be cut from a person's hair or outer skin.[1148] One camel is good enough for seven people to offer as sacrifice and so is a cow.[1149] A jadh' can only be

accepted from sheep otherwise a thani is accepted. A jadh' from sheep is an animal six months old and entering the seventh month. [Abu 'l-Qasim said: "I heard my father say: 'I asked some bedouins, how can you tell when a sheep becomes a jadh''?" They answered: 'The wool stands up on its back as long as it is a lamb, but as soon as the wool lies on its back it is considered a jadh'. A thani from goats is an animal a year old and entering its second year; from cows it is an animal two years old and entering its third year; and from camels, it is an animal five years old and entering its sixth year.][1150]

He said: As far as udhiyah is concerned, the offering of an obviously one-eyed animal should be avoided, as well as what is obviously lame or incurably sick animal, or thin and marrowless, or suffering from 'adb. 'Adb is when more than half of the ear or of the horn is lost.[1151] If the offering is purchased in a healthy condition and committed (to sacrifice) and then becomes defective while in the purchaser's possession, it can still be slaughtered and accepted for udhiyah.[1152] The young one delivered by a sacrificial animal is slaughtered together with the mother.[1153]

To commit the animal to sacrifice, the person says: 'This is an udhiyah.[1154] If a defective animal is thus yoffered, it must be slaughtered, but it is not acceptable. The sacrificial animal of a dead person cannot be sold in

order to settle his debts. The person's inheritors can eat of it. It is recommended for the person making the offering to eat one-third of it, offer one-third of it as charity (sadaqah) and give away one-third of it. It is permissible to eat more than one-third of it.

The butcher is not to be paid anything from the sacrificed animal. It is lawful for the person making the offering to make use of the animal's skin. Its sale is unlawful, and so is any part of the sacrificed animal.[1155] It is acceptable to substitute the udhiyah already committed with another of higher quality.

If on the day of sacrifice some part of the day passes by, and that is the time normally taken by the Imam to complete the 'Id prayer including the khutbah, then the slaughtering may be carried out[1156] until the end of the second day of the days of tashriq.[1157] The slaughtering is carried out during the day. It is not permissible to slaughter at night. It is not acceptable if the slaughtering is carried out before its time and in this case a replacement (sacrifice) is necessary. It is preferable that only a Muslim carry out the slaughter,[1158] and it is best for the person making the offering to slaughter the animal himself; the following must be said at the time of slaughtering: 'In the name of Allah, and Allah is the Greatest'. If it is omitted out of forgetfulness, the sacrifice is still acceptable. It is not necessary to

mention at the time of slaughtering on whose behalf the animal is being slaughtered, because the intention suffices.

It is lawful for seven people to share in sacrificing a cow or a camel.[1159]

Aqiqah[1160] is sunnah[1161] with two sheep slaughtered on the seventh day for a boy and one sheep for a girl. Defective animals must be avoided for aqiqah just as for udhiyah. As for eating the meat, offering part of it as charity and giving away part of it, it is the same as for udhiyah except that the meat is cooked in unbroken limbs in the case of aqiqah.[1162] Allah knows best.

48. Racing and Shooting

48.1

He said: Competition is permissible in horseback riding, archery and camel racing, and nothing more.[1163] When competition is intended, one of the two competitors is allowed to stake a wager while the other is not allowed to do so. The bettor keeps what is staked if he is the winner, and nothing is taken away from the loser. If the other person wins he takes what is staked by his rival. It is not permissible for both of them to stake a wager unless they include a muhallil[1164] whose horse is a match for theirs <or whose camel is as strong as theirs> or whose bow and arrows are as firm as theirs. The muhallil takes what is staked by

the other two rivals if he wins. If one of the two bettors is the winner, he keeps his stake and also takes the other bettor's stake which becomes his, and nothing is taken from the muhallil.

If two horses are sent off, it is not permissible for one of the horsemen to let another horse run along side of his to make her run faster, nor is the person allowed to shout out during the race because of what was related from the Prophet -may the blessings and peace of Allah be upon him- who said: 'No letting another horse run along side a racer's horse (to make her run faster), and no following and shouting behind a horse (to make her run faster).[1165]

49. Oaths and Vows

49.1

He said: If a person takes an oath to do something and does not do it, or not to do something and does do it, then kaffarah is binding on that person. If the oath is broken out of forgetfulness, nothing is binding provided the oath is not related to divorce, or manumission of a slave.[1166] Kaffarah is not required if the oath is taken on something known to be false because the nature of sin committed here is greater than what can be atoned for through kaffarah.[1167] Kaffarah is binding only on a person who swears in earnest. If a person swears on something which is believed to be

consistent with the oath and it turns out not to be the case, no kafffarah is binding, because this is considered as an unintentional oath,[1168] [unless the oath is related to divorce or manumission of a slave in which case the person is held responsible for breaking an oath].

He said: The kind of oath that requires kaffarah is that for which a person swears by Allah the Almighty and Most Exalted or by one of His names or by a verse in the Qur'an,[1169] or vows to donate property or to perform hajj or to keep the covenant[1170] or to apostatize from Islam[1171] or to ban a slave or some wealth,[1172] [or to slaughter a child] or to say: 'I swear by Allah', or 'I bear witness before Allah', or 'I am determined by Allah or by the trust of Allah the Almighty and Most Exalted'.[1173]

If a person swears using all these types of oath on one thing and then breaks them, only one kaffarah is binding. If a person swears on one thing using two types of oath which require two different kaffarah, then each one of the two types of oath will require a kaffarah to be carried out.

If a person swears by the truth of the Qur'an and breaks the oath, for every verse therein, kaffarah of oath is required.[1174] Two reports were related from Abu 'Abd-Allah -may Allah have mercy upon him- concerning taking an oath to slaughter one's child. According to one of two reports, kaffarah of oath is required. According to the other report, a ram must be slaughtered.[1175] [A person who

swears to ban his wife has the same penalty as the muzahir,[1176] regardless of whether or not divorce is intended]. If an oath is broken after it has been taken to manumit all that one owns, then everything owned with regard to male or female slaves, mudabbar slaves, umm al-walad slaves and mukatab salves and the portion owned of the person's slave, are all considered manumitted. A person who takes an oath has the option to carry out the kaffarah after or before the oath is broken, regardless of whether the kaffarah is carried out by fasting or otherwise,[1177] unless it is related to zihar or banning one's wife in which case kaffarah is carried out before the oath is broken. If, after taking an oath, the formula of exception (if Allah wills) is added, then the person has the option to either fulfil the oath or not and no kaffarah is binding provided no other statement is made between the oath and the formula of exception. In the case where the formula of exception is made in relation to divorce or manumission (of a slave) Abu 'Abd-Allah is undecided according to most reports related from him. In another report he affirmed confidently that in such case exception makes no difference.[1178]

If a person says: 'If I marry such and such a woman she is divorced', she is not considered divorced if he marries her. If the person says: 'If I own such and such a person he is free', and the person is owned then he is considered free.[1179] If a person swears that such and such a woman will

not be married to or such and such a man will be not be purchased, and he marries her invalidly or he purchases him invalidly, he is not considered as having broken his oath. A person who swears that such and such a man will not be purchased or will not be hit and then appoints someone to purchase or hit him, is considered as having broken the oath[1180] [provided his intention is not to do it himself]. A person who swears not to do something in relation to manumission of a slave or divorce and does it out of forgetfulness, is considered as having broken the oath.[1181] If a person puts an interpretation on his oath, the interpretation is in his favor if he is innocent, but he may not benefit from his interpretation if he is a wrongdoer;[1182] because of what was related from the Prophet -may the blessings and peace of Allah be upon him- who said: 'Your oath is based on what is accepted by the other person to be true'.[1183]

50. Kaffarah

50.1

He said: If kaffarah of oath is required due to breaking an oath, the person has the option - if it is desired - to feed ten free needy people regardless of whether they are adults or minor, provided they are capable of eating food.[1184] To each needy person a mudd of wheat or

flour is offered, or two _ritl_s of bread[1185] or two _mudd_s of barley or dates. It is not acceptable to offer in place of food several times its value in silver.[1186] Relatives who can receive _zakah_ of a person's wealth can also be offered his food. If only one needy person is found, the food is offered to this person each day for ten complete days. If it is desired, a person may clothe ten needy people, with clothing adequate for prayer in the case of a man or a long outer garment (_dhar_') and a veil for a woman. If it is desired, a person may manumit a believing slave who has fasted and prayed because faith is based on words and deeds[1187] - the slave must be healthy and with no defect detrimental to work. If a slave is purchased conditional upon manumission and then manumitted in fulfillment of _kaffarah_ the slave is considered manumitted but not acceptable in fulfillment of the _kaffarah_. Also, if part of a slave undergoing manumission is purchased and owned with the intention of setting the slave free in fulfillment of _kaffarah_, the slave is considered manumitted but not acceptable for _kaffarah_.[1188]

An _umm al-walad_[1189] or a _mukatab_ who has already paid part of the _mukatabah_ contract is not acceptable for _kaffarah_.[1190] _Mudabbar_[1191] or a eunuch or a child born out of wedlock can be accepted. If any of these three[1192] cannot be carried out, then three consecutive days have to be fasted.[1193] A slave who breaks the oath can only carry out

the *kaffarah* by fasting. If, while a slave, an oath is broken and then the person is manumitted before fasting could be observed, fasting still has to be carried out and nothing else is acceptable. If what remains of a person's food and of his dependents for the day and its night is sufficient only for the fulfillment of *kaffarah*, then fasting must be observed in fulfillment of the *kaffarah*.

Fasting is acceptable in fulfillment of the *kaffarah* for a person who owns a house needed to live in, or an animal needed to ride, or a servant whose services are needed. It is acceptable to feed five needy people and clothe five others.[1194] It is also acceptable to manumit two halves of two male slaves, or two halves of two female slaves, or two halves of a male slave and a female slave.[1195] It is not acceptable to manumit one-half of a slave and feed five needy people or clothe them. If during fasting, a person becomes financially able, it is not necessary to give up the fasting for the manumission of a slave or for feeding unless that is desired.[1196]

50.2 Concerning Oaths in General

He said: Oaths are referred to intentions. If nothing is intended the oath is referred to its cause or what provoked it.[1197] If an oath is taken that a house will not be lived in while the person is still living in it, the house must be quit immediately. Failure to leave it

immediately constitutes a breach of oath. The person is not breaking the oath if an oath is taken that a house will not be entered and the person is carried into it and cannot prevent it. The person is not breaking the oath if an oath is taken that a house will not be entered and the person puts in his hand or foot or head or a part of it.[1198] If an oath is taken that a house will be entered, the oath is not fulfilled until the person has completely entered it. However, if an oath is taken that a house will be entered or something will be done, the oath is not fulfilled until the entire thing is done or the house is completely entered. If an oath is taken not to wear a piece of clothing while the person is wearing it, it must be taken off immediately. If that is not done, the person has broken the oath. If an oath is taken not to eat food purchased by Zayd, and food purchased by Zayd and Bakr is eaten, the person has broken the oath[1199] unless the intention was that the purchase should not be made by one of them alone. If an oath is taken not to speak to both of them or not to visit them and one of them is spoken to or visited, the person has broken the oath unless the intention was that the action may not be performed to both of them together.

If an oath is taken not to wear a particular piece of cloth and it or its value are used to purchase another piece of cloth then worn, it is a breach of oath provided the piece of cloth is conferred most graciously upon the person.

And so is the case if its value is used.

If a man swears not to go to bed with his wife in a particular house and then goes to bed with her later on in another house, the oath is broken if the cause of his oath is due to aversion toward his wife and the house has nothing to do with provoking the oath. A person who swears to beat a slave tomorrow and then dies today has not broken the oath. In the event of the slave's death the person has broken the oath. A person who swears not to speak to another person for some time[1200] has broken the oath if the other person is spoken to before six months pass by. If a person swears to pay what is due to another person at a certain time and it is settled before the time, the oath is not broken if the intention was not to pass the pre-established time.[1201] A person who swears not to drink water from a vessel and then drinks some of it has broken the oath unless the intention was not to drink all of the water.

If a person says to another person: 'I swear by Allah I will not leave you until I have claimed from you what is due to me', and the other person runs away, the swearer has not broken the oath. It is a breach of an oath if a person says to another person 'I swear by Allah, we will not be separated', and the other person runs away. If a man swears on his wife not to leave (the house) except by his permission, it is binding for all times unless it is meant

once. A person who swears not to eat fresh dates and then eats them when they become dried dates has broken the oath. The case is the same for eating anything produced from the fresh dates. It is not a breach of an oath if a person swears not to eat dried dates and then eats fresh ones. It is also not a breach of an oath if a person swears not to eat meat and then eats fat or marrow or brain,[1202] unless the intention was to avoid grease, in this case it is a breach of the oath to eat fat. It is a breach of an oath if a person swears not to eat fat and then eats meat because meat cannot be devoid of fat. It is a breach of an oath if a person swears not to eat meat and does not intend any meat specifically and then eats meat from cattle or bird or fish.[1203] It is also a breach of an oath if a person swears not to eat a sawiq (a kind of dish made of wheat or barley, with sugar and dates) and then drinks it; or swears not to drink it and then eats it, unless it is coupled with some particular intention.[1204]

If a man swears to divorce his wife by not eating a particular dried date which then falls among other dried dates of which he eats one, the man is prevented from having sexual intercourse with his wife until he finds out whether the eaten date is or is not the one he has sworn on. He cannot with certainty be considered as breaking the oath until all the dates have been eaten. The oath is not fulfilled if a person swears to hit another person with ten

scourges and he combines them and hits the latter only once.[1205] It is a breach of an oath if a person swears not to speak to another person and then writes or sends a messenger to that person, unless the intention was not to speak to the person face to face.[1206]

51. Vows

51.1

If a vow is made to obey Allah the Most Exalted, it is obligatory to fulfill it. If it is made to disobey Him then He must not be disobeyed, instead kaffarah (of the oath) must be carried out.[1207]

[A vow of obedience includes vowing to perform the prayer, fast or perform pilgrimage or umrah, or to manumit a slave, give charity, carry out i'tikaf or jihad and the like regardless of whether the vow has been made without qualification, such as if a person says: 'I vow to Allah the Almighty and Most Exalted, to do so and so', or with a qualification, such as: 'If Allah the Almighty and Most Exalted cures my illness', or 'if such and such a person is cured', or 'if my wealth not here becomes safe', and the like in which case it becomes incumbent to fulfill the vow on attaining what is hoped for.

A vow of disobedience includes saying 'I vow to Allah to drink an intoxicant' or 'to kill a forbidden soul' and so

on in which case it must not be carried out, instead _kaffarah_ of oath must be performed. If a person says: 'I vow to Allah to reside in my house or ride my animal or to dress in my best clothes' and so on, it is not a vow of obedience. Nevertheless if what is vowed is not carried out then _kaffarah_ (of the oath) is necessary because making a vow is treated as taking an oath. It is recommended for a man who vows to divorce his wife not to do so, but instead carry out _kaffarah_ (of the oath)].[1208] It is acceptable to give one-third of one's wealth as charity if a vow has been made to give the whole wealth, according to what is related from the Prophet -may the blessings and peace of Allah be upon him- who said to Abu Lubabah[1209] when he said: 'I am giving up all my wealth O Messenger of Allah as a penitence, and the Messenger of Allah -may the blessings and peace of Allah be upon him- said: 'One-third will suffice'.[1210] If an elderly person who cannot fast vows to fast, then _kaffarah_ (of the oath) is required as well as the feeding of a needy person each day. If fasting is vowed without mentioning or intending the number of days, the minimum number of days required to fast is one day and the minimum for performing prayer (if prayer is vowed) is to carry out two _rak'ahs_.[1211] It can not be accepted from a person who vows to go on foot to the Sacred House of Allah unless pilgrimage or _'umrah_ is intended. Such a person may ride an animal if unable to walk on foot and then carry out _kaffarah_ (of the oath).[1212]

If a vow is made to manumit a slave the slave must be such as is acceptable for the fulfillment of the obligation[1213] unless a particular slave is intended. If a vow is made to fast a month starting from the day such and such a person arrives and the person arrives on the first day of the month of Ramadan, the vower's observance of the fast will suffice both for Ramadan and for the vow made.[1214] If a vow is made to fast on the day such and such a person arrives, and the person arrives on the day of Fitr or Adha, then fasting must be avoided (on this day) and be observed on another day in its place and then kaffarah (of the oath) is carried out. If the arrival falls on one of the days of tashriq, then the vower may fast on that day according to one of two reports related from Abu 'Abd-Allah -may Allah have mercy on him. According to the other report, such a day must not be fasted,[1215] another in its place must be fasted and also kaffarah (of the oath) carried out. If a person vows to fast for unspecified months successively, and then falls sick during some of the days, the fast may be completed after health is regained based on the days already fasted and the kaffarah of oath carried out. The person may, if so desired, start over one month's fast successively and no kaffarah is necessary. The case is the same if a woman vows to fast one month successively and then has her period during some of the days.

A person who vows to fast a specific month and then

breaks it a day without any legitimate excuse is required to start over the fast for a month and then carry out kaffarah of the oath.[1216]

If a person vows to fast and then dies before it could be accomplished, the heirs among the close relatives may fast on the person's behalf. The case is the same with anything related to a vow of obedience (to Allah).[1217]

52. Conduct of the Judge

52.1

He said: To be qualified for appointment as a judge, a person must be adult, Muslim, free, just, learned, knowledgeable in fiqh, pious and in full possession of his mental faculties.

A judge cannot pass judgment on two people while in a state of anger, and must consult knowledgeable and reliable people in difficult cases.

The judge must not depend on his own knowledge of a matter to pass a judgement[1218] and must not reverse a judgement passed by another judge if the case is taken before him, unless it conflicts with the Scripture or the sunnah or ijma'.[1219] If a person unknown to the judge testifies before him, inquiry must be made into his character and if declared reliable by two persons then his testimony is accepted. If declared reliable by two persons

and unreliable by two other persons, then it is better to declare him unreliable.[1220] The court clerk must be reliable and also the divider of property on the judge's behalf.

No gift can be accepted from a person who was not used to giving him gifts before his appointment as a judge. The two opponents must be treated with indiscriminate justice in regard to their access, seating and the manner of addressing them. If judgement is passed against a person from another district and the judge of the latter city is notified in writing to execute the judgment the notification is accepted and the claim is awarded against the one on whom the sentence is passed. The notification can be accepted only through the testimony of two reliable persons who must say: 'He read it to us' or 'It was read to him in our presence and he said: 'Bear me witness that this is my note to such and such a person'. Translation is not acceptable from a non-Arab litigant if the judge does not understand him, unless it comes from two reliable persons who know his language.[1221] If after the judge has been dismissed, he says: 'I had already passed while in office a judgement in favor of such and such a person's claim against such and such a person', his statement is accepted and the judgment executed.[1222] Judgment may be passed against a person not present if the evidence is established against that person.[1223]

53. Division (of Property)

53.1

If two partners appear before a judge in connection with a home and so on and ask that it be divided between them, the judge then divides it and then affirms in their case that its division between them is based on their confessions and not on any evidence confirming their ownership.[1224] If one of the two partners ask the other to share the property with him and he refuses, the judge may compel him to do so if convinced of their ownership and the property is divisible and can be taken advantage of if divided between them. To divide it, lots are cast, and each of them becomes entitled to what falls to his share unless both of them come to terms in which case each of them gets what is agreed upon.[1225] <The most entitled to the care of the child (sane) and the insane is the child's mother. The most entitled to the care of the child after the mother is her mother, then her maternal parents beginning with the closest of them, then the next closest and so on, then the father, then the germane sister, then the consanguine sister, then the uterine sister, then the maternal aunt, then the paternal aunt according to the authentic report from him (Ibn Hanbal). The maternal aunt from the father's side is more entitled (to the care of the child) than the maternal aunt from the mother's side. The little girl's

cousin on the father's side has no right to her care. Hence, she cannot be turned over to him when she is seven because he is not her mahram. If the child's mother declines the responsibility to the care of the child when she is entitled to it, then it is transferred to her mother according to the most distinct of the two viewpoints. According to the other viewpoint, it is transferred to the father (of the child) because the maternal parents of the child's mother are considered secondary to her in terms of entitlement. Hence if she gives up her right then that of those who are secondary to her is considered given up as well. If all of these people are unavailable, are the men related on the mother's side (dhawu'l arham) entitled to the care of the child? There are two (opposing) views on this case. A slave or unrighteous person (fasiq) or a disbeliever is not entitled to the care of a Muslim child. A woman married to a man outside of the prohibited degree to the child is not entitled to the care of the child. If these impediments cease to exist, such as, for example, if the slave becomes free or the disbeliever becomes Muslim or the unrighteous becomes righteous or the insane becomes sane, their right to the care of the child is returned to them. If one of the parents intends to move to a distant and safe city the father is most entitled to the child. According to another from him (Ibn Hanbal), the mother is most entitled. If any of the conditions is missing then

whichever of the parents who has not moved is most entitled to the care of the child. If the child chooses his father (when given the option to choose between his parents) he stays with the father at night and day. If the mother is chosen, he stays with her at night and stays with the father during the day so as to learn a skill, writing and moral discipline. If the other parent (not chosen before) is later on chosen the child is transferred to his or her care. If the first parent (chosen before) is chosen again the child is returned to this parent. If none of the parents is chosen then lots are cast between them (to determine who takes care of the child). If there are two persons of equal degrees in terms of the child's care such as, for example, two sisters, one of them is chosen according to the casting of lots as we have mentioned. When a little girl is seven years old she stays with her father. The mother should not be refused of visiting or sick-nursing her. According to al-Shafiʿi, she is given the option (to choose between the two parents) just as the little boy is also given the option to do so>.

54. Testimony (in General)

54.1

He said: In the case of testimony against zina, only four men of probity, free and Muslims are accepted. No less than two men can be accepted in cases other than property and of which the men are well informed. No less than one man and two women or a reliable man corroborated by the oath of the complainant can be accepted in regard to property. The testimony of a reliable woman is accepted in the cases to which men are not privy, such as nursing a child, child-delivery, menstruation and performing 'iddah and so on. If incumbent upon a witness to testify, the testimony must be given against any person whether close or distant relative, and the witness cannot refuse to do so if able to testify. It is acceptable to testify to any action perceived with the eyes or heard for certain, even if the person testified against is not in sight. That which has been made public through the news or is positively known by heart can be attested to such as giving testimony on kinship or the birth of a person. Testimony cannot be accepted from a man or woman not in full possession of their mental faculties, or a non-Muslim, or a minor[1226] or an unreliable person. A reliable person is one who does not show signs of untrustworthiness. <This is according to what has been said

by Ibrahim al-Nakha'i and Ishaq>.[1227]

The testimony from non-Muslims of the people of the Scripture is acceptable with regard to a will made by a traveller provided they are the only available witnesses.[1228] Their testimony cannot be accepted in anything else.

The testimony from an adversary cannot be accepted nor from anyone who has a personal interest in testifying in their own defense. Testimony cannot be accepted also from a person known for committing many errors and given to neglect. The testimony of a blind person who can distinguish between voices is accepted.[1229]

He said: Testimony from parents however high in ascent is not acceptable on behalf of their children however low in descent, <and that from the children however low in descent cannot be accepted on behalf of their parents>[1230] however high in ascent. So is the case with the testimony from the slave owner on behalf of the slave <or the testimony of the slave on behalf of the slave owner> or from the husband on behalf of his wife or from the wife on behalf of her husband. A brother's testimony on behalf of his brother is acceptable. Testimony from a slave is acceptable in every case except for *hudud*.[1231] Testimony is accepted from a female slave in cases where a woman's testimony is accepted. Testimony from a person born out of wedlock is acceptable in connection with *zina* and so on.[1232] Testimony is accepted from the slanderer who has repented.[1233] His repentance is

that he acknowledges that he has lied.

He said: If a testimony had been given before when the person was unreliable and was rejected, it cannot be accepted when the person has since become reliable. It can be accepted if the testimony had not been given in the judge's presence before becoming reliable. If before a testimony from a reliable person is considered in a legal decision something occurs which renders the person's testimony unacceptable, the testimony can no longer be considered in that legal decision.

He said: Indirect testimony from a reliable person is permissible in everything except in the cases of hudud[1234] when the first witness is either dead or not present.

He said: A person can testify for another person who has been heard making acknowledgment of a claim even if not asked to do so.[1235] Testimony from a person who keeps himself out of sight is acceptable if the person is reliable.[1236] Allah knows best.

55. Miscellaneous Legal Cases

55.1

He said: If a man dies leaving two sons and two hundred dirhams and one of the two sons acknowledges his father's debt of one hundred dirhams in favor of some person outside the family, then the creditor is paid half of that son's

share of his father's inheritance unless the son who acknowledges the debt is a just person and the creditor desires to take an oath corroborated by the testimony of the son, and thus receive one hundred (dirhams), with the remaining one hundred dirhams divided between the two sons.

If a man dies leaving two sons and there is a witness that money is owed to him, and he also owes an amount that will exhaust his wealth, and if then the two heirs refuse to take an oath corroborated by the witness to the latter debt the creditor cannot take an oath corroborated by the deceased's witness and thus claim the debt. If the two heirs take the oath corroborated by the witness the debt becomes legally effective and is paid to the creditor.

He said: If a person makes a claim against another person and then mentions that the evidence available is far away, allowing the defendant to take an oath after which time the claimant brings the evidence, it becomes legally effective and the oath taken (by the defendant) cannot eliminate the (claimant's) right.

The oath by which a person is cleared from guilt is that which is taken by the name of Allah the Almighty and Most Exalted even if the swearer is a non-Muslim except that the following statement is said to a Jew: Say: 'I swear by Allah who revealed the Torah to Moses'. In the case of a Christian the following is said: Say: 'I swear by Allah who revealed the Gospel to Jesus.' If they have places they

glorify and in which they fear to swear if they are lying, they are made to swear in those places.

A man in debt can swear absolutely that nothing is owed whereas the heir of the debtor can swear that he has no knowledge of it. If two out of four witnesses testify that such and such a man has committed zina with such and such a woman in a certain house, and the other two witnesses testify that he committed zina with her in another house, the four witnesses are considered as slanderers and liable to hadd.[1237] If the four witnesses appear separately before the judge while still in session and he does not rise, their testimony is accepted. If some of them appear after the judge has risen, they are all considered slanderers and liable to hadd. If after the testimony of two witnesses has been considered in an injury or a murder case, the two witnesses come back and say: 'We deliberately told a lie', they are subjected to retaliation.[1238] If they say: 'We made a mistake', they are fined the blood money or subjected to compensation for the incurred damage. If the testimony concerns property, they are fined that amount and nothing is claimed from the person in whose favor it has been ruled regardless of whether the property is still available or has been used up. Also, if the case involves a male or female slave, they are fined what the slave is worth.

If after amputating the thief's hand based on the testimony of two witnesses the judge finds out that they are

non-Muslims or *fasiqs* then the blood money for the amputated hand is paid from the public treasury.[1239]

A slave who claims his master has manumitted him and presents a witness may take an oath corroborated by the witness and be considered free.[1240] A person who testifies falsely is subjected to punishment and then exposed to people in places where he is well-known and the people made aware that he is a false witness (*shahid zur*) if found to be doing so deliberately. If a reliable person alters a testimony before the judge by adding or withdrawing some information it is acceptable if no judgment has yet been passed on the basis of it. If a person claims one thousand (*dirhams*) and testifies to it, and another person claims five hundred (*dirhams*) and testifies to it, judgment is passed in favor of the person claiming one thousand for five hundred (*dirhams*) and then the person takes an oath corroborated by a witness in order to claim the other five hundred (*dirhams*) if so desired. If a person claims to have a reliable witness and the reliable witness refuses to testify for the claimant but then testifies later on and says: 'I forgot about it,' the testimony is accepted. The whole testimony is unacceptable if part of it is for personal interest.

If a person dies leaving a son and one thousand *dirhams* and a debt is claimed on the deceased for one thousand *dirhams* which is accepted [by the son][1241] and a debt in the

same amount is claimed on the deceased by another person which is also accepted by the son, the thousand dirhams is divided between the two creditors if the claim is made in one session. If the claim is made in two different sessions the thousand dirhams goes to the first claimant and nothing is due to the second claimant.

If a claim is made against a sick person who signals with the head to indicate yes, the claim is not considered until words are uttered with the tongue.[1242] If a person makes a claim and then says: 'I do not have any evidence', and then submits evidence later on, it is not acceptable, because the person has disproved his own evidence.[1243] If a legal guardian (wasi) testifies against people entrusted to his care, the testimony is acceptable. It is not acceptable if the testimony is given in their favor while they are under his guardianship. The testimony of a person who suffers sometimes from fainting fits through loss of breath is acceptable at the time consciousness is regained. The testimony of a [reliable] physician in the absence of two physicians is acceptable in regard to a fracture in which the bone is exposed (mudihah). The case is the same with the veterinarian in regard to animal disease.

55.2 Claims and Evidence

He said: If a man claims a woman to be his wife and she denies it, while he has no evidence to prove his claim, they

are both separated from one another and there is no need for him to take an oath.[1244] If a person claims ownership of an animal in another person's possession and it is denied by the latter, and each of them presents evidence, the evidence of the claimant is legally effective and no attention is paid to the evidence of the defendant because the Prophet -may the blessings and peace of Allah be upon him- instructed that the claimant's evidence be listened to and the oath of the defendant[1245] regardless of whether the evidence of the defendant indicates that the animal is his or that the animal was bred in his possession.

If the animal is with them, and one of them presents evidence that it is his, and the other presents evidence that it is his and was bred in his possession, both become null and void and both persons are considered as having no evidence, while each of them becomes entitled to half of the animal and takes an oath against the other person in regard to the other half. If the animal is in the possession of a third person and he admits that it does not belong to him or that it belongs to one of the other two who is not known specifically, then lots are cast between both to determine the owner, who is then required to take an oath, whereupon the animal is delivered to him.

If a house in a person's possession is claimed by another and the former admits that it belongs to a third party, and if that person who is the admitted owner is

present, he becomes the claimant's legal opponent. If absent and the claimant has proof, then judgment is for the claimant and the absent person may still litigate on his return. If a man dies leaving two sons; one a Muslim and the other a non-Muslim, and the Muslim claims that his father died a Muslim, while the non-Muslim claims that his father died a non-Muslim, the non-Muslim's claim corroborated by his oath is accepted because since the Muslim brother acknowledged having a non-Muslim brother it is implied that the Muslim has admitted the father was a non-Muslim only claiming to be a Muslim. If the non-Muslim's brotherhood is not acknowledged and there is no evidence to prove it, the estate is divided equally between them since they are both on equal ground. If the non-Muslim presents evidence that his father died a non-Muslim while the Muslim presents evidence to the effect that he died a Muslim, then all evidence becomes null and void, and they are both treated as having no evidence. If two witnesses say: 'We know him as a non-Muslim,' and two other witnesses say: 'We know him as a Muslim', the estate is decided in favor of the Muslim brother provided the witnesses have set no date on their acquaintanceship with the father because Islam overrides disbelief.

If a woman and her son die, and the husband says: 'She died before my son and so we inherited from her, then my son died and then I inherited from him', and her brother says:

'Her son died and she inherited from him, then she died and we inherited from her', [and if both have no evidence to prove their claims], each of them must take an oath in order to void the other's claim after which case the son's inheritance goes to his father and the woman's inheritance is divided equally between her brother and the husband.

If two witnesses testify against a person that he has taken one thousand (dirhams) from a child, and another two witnesses testify against another person that he has taken from the child one thousand (dirhams), the child's legal guardian may demand one thousand (dirhams) from any one of them, unless each testimony points to a different thousand (dirhams) in which case the legal guardian gets two thousand (dirhams). If two men from the enemy territory leave their land to a Muslim land [while accepting Islam] and each of them mentions that he is a brother to the other one, they are both taken by their word as brothers. If they are captives and that claim is made after they have been manumitted, the estate of each of them goes to his manumitter if they are not believed unless their brotherhood claim is corroborated by a testimony from two Muslims in which case their kinship is established and each of them may inherit from the other.

He said: If a husband and a wife are divorced in the house and each of them claims ownership of what is in the house, or if both die and their heirs claim that the

contents of the house belong to the person from whom they inherit, then the property that is suitable for men's use is awarded to the man, and what is suitable for women's use is awarded to the woman, and what is suitable for both of them is shared equally between the two of them.[1246]

He said: A person who has a claim against another person and is prevented from it cannot take out the equivalent value of it from the other person's wealth if in a position to do so, because of what the Messenger of Allah -may the blessings and peace of Allah be upon him- said: "Be loyal to whoever confides in you, and do not act disloyally to whoever fails you."[1247] <related by al-Tirmidhi> Allah knows best.

56. Manumission (of Slaves)

56.1

He said: If a slave owned by three people is manumitted by them altogether, or if the third person is authorized by the other two partners to manumit their shares of the slave including the manumitter's and it is done, or if each of them manumits his or her share while in a state of financial difficulty, the slave becomes free, and the wala is shared equally between the three of them. If manumitted by a financially able person among them, then the entire slave is manumitted and the manumitter must pay two-thirds of the

slave's value to the other two partners. If after the slave has been manumitted by the first person the other two partners also follow suit before the value due to them is received, then the manumission of the two partners has no effect on the slave's freedom because the slave has already become free by the manumission from the first partner. If manumitted by the first person while in a state of financial difficulty and then followed by the second partner's manumission who is financially capable, then both portions of the first and second partners are manumitted [and the second partner must pay one-third of the slave's value] and one-third of the slave's wala' goes to the second manumitter.[1248] The portion of the second manumitter - if also in financial difficulty - is considered manumitted while one-third of the slave is still considered as a slave owned by the partner who has not declared him manumitted. In the event of the slave's death while some property is owned, one-third of it goes to the partner who has not declared him manumitted, and two-thirds of it goes to both the first and second manumitters by virtue of wala' provided the deceased has no other heir more entitled to the property than the two manumitters.

He said: If a slave is owned by two people and each of them claims that the other partner's portion of the slave has been manumitted, and if they are both in a state of financial difficulty then neither person's claim can be

accepted against the other partner. If they are both reliable, the slave takes an oath along with a testimony from each of them and becomes free, or takes an oath along with the testimony from one of them and his or her half is considered free.

If the two partners are financially able, the slave becomes free by virtue of each of them acknowledging the slave's freedom, and each partner claims half of what the slave is worth on the other partner. In the absence of evidence, each of them takes an oath against the other partner.

If a man dies leaving two sons and two slaves and nothing else is owned while each slave is worth the same as the other, and one of the two sons says: 'My father manumitted this one', and the other says: 'My father manumitted one of them, but I do not know which of them', then lots are cast between them, and if the lot falls upon the slave identified by the son as manumitted two-thirds of this slave is considered manumitted if complete manumission is not approved by both sons, and in which case the other slave is still considered a slave. If the lot falls upon the other slave one-third of him is manumitted and the son whose (doubtful) statement was the cause of casting lots is entitled to one-sixth of this slave along with one-half of the other slave, while his brother is entitled to one-half of this slave along with one-sixth of the slave that he

admits his father manumitted, and thus one-third of each of the two slaves is considered free. If one-half of a slave belongs to a person, and one-third belongs to another person and one-sixth still belongs to another person and the slave is manumitted altogether by both the persons who own one-half and one-sixth while both are financially able, then the slave is manumitted on their own account and both are equally liable to payment of the other partner's portion while the wala' of the freed slave is shared between them in three parts: two-thirds of which goes to the owner of one-half of the slave and one-third goes to the owner of one-sixth. If a female slave is owned by two men and one of them has sexual intercourse with her and makes her pregnant, he is subjected to a punishment less than a hadd and must pay half of the slave's value to his partner and she becomes umm al-walad to him and the child born to him is free. If the man is financially incapable, he is indebted to half the value of the female slave. If she is not pregnant, he must pay half the marriage portion equivalent to her value, in which case she is still owned by both of them. If a person owns a share of a slave whose manumission is incumbent upon the person through other than inheritance while the person is financially able, the slave is considered completely free and the other partner is entitled to the value of his share of the slave from that person. If financially incapable, the share owned by the person is the only part manumitted of

the slave. <If part of the slave is owned through inheritance, only the share owned is what is manumitted of the slave> regardless of whether the person is financially able or not. If three slaves are owned and then manumitted by their owner on his deathbed or if all or one of them is declared free on the owner's death while the other two slaves are recommended for manumission through a will, and if only one of them can be manumitted through one-third (of the estate) because each of them is worth the same as the other, lots are cast between them with one lot marked "freedom" and two lots each marked "slavery", and only the person upon whom the "freedom" lot falls is manumitted.[1249] If a person on his deathbed says: 'One of you is free' or 'all of you are free' and then passes away, one or all of them become free accordingly. If one-half of a slave is owned by a partner and declared free on the partner's death or if manumitted on a deathbed and then becomes free on the death of the partner from whose estate one-third is sufficient to cover the payment of the other partner's one-half of the slave's value, then one-half of the value is given to the partner and the slave is fully free according to one of two reports related from Abu 'Abd-Allah -may Allah have mercy on him. According to the other report, only the partner's share of the slave is manumitted even if one-third of the estate can cover the payment of the other partner's share.[1250] The case is the same if part of the slave is

declared free upon the owner's death while the slave is solely owned by him. If slaves are manumitted (on a deathbed) while one-third of the person's estate is sufficient to gain their freedom and are therefore declared manumitted after which time a debt is discovered which could exhaust their value, then they are sold to settle the person's debt. If three of them are manumitted but only one of them is considered for manumission due to the fact that one-third of the estate can only pay for one slave's freedom, and later on if some wealth belonging to the deceased is discovered, of which one-third could pay for their freedom, then the remaining slaves are also manumitted.

If a person says to his slave: 'You are free at a specific time', he is not manumitted until that time arrives. If an umm al-walad of a Christian accepts Islam the man is prevented from having sexual intercourse or pleasure with her, and he must pay her maintenance. If he also accepts Islam she becomes lawful to him and is manumitted after his death.[1251]

If a person says to a female slave: 'The first child you deliver is free', and she delivers two children, lots are cast between them and the child upon whom the lot falls, is manumitted if it is problematical which of the two children was delivered first.

If a slave says to a person: 'Buy me from my master for

this amount of (my own) wealth and manumit me' and it is done the slave is free and the buyer must pay the seller the equivalent amount, and the wala' goes to the buyer, unless the slave said to the person: 'Sell me with this wealth' in which case both the purchase and manumission are both invalid, for the slave master has actually received what already belongs to him.

57. Manumission of Slaves by Tadbir[1252]

57.1

He said: If a person says to a male or female slave: 'You are manumitted by tadbir, or 'I manumit you by tadbir, or 'you are free after my death', then the slave is manumitted by tadbir. The mudabbar slave can be sold to settle a debt. The female mudabbar slave cannot be sold except for the purpose of settling a debt according to one of two reports related from Abu 'Abd-Allah -may Allah have mercy on him. According to the other report, the female slave is treated the same as the male slave.[1253] The mudabbar slave is still mudabbar if re-purchased after having been sold for the settlement of a debt. If after manumitting a slave by tadbir a person says: 'I have withdrawn the manumission of the slave by tadbir' or says: 'I have rendered it void,' it cannot be considered void merely because it has had a qualification attached to it

according to one of two reports. According to the other report, such manumission by tadbir is void.[1254] The child of a female mudabbar slave manumitted by tadbir enjoys the same status as the mother. It is lawful to have sexual intercourse with one's female mudabbar slave. A person who denies having declared another person mudabbar cannot be ruled against except through two reliable witnesses or through a witness and the testimony of the slave. If after pronouncing tadbir on a slave the person dies, while having some absent property, or a debt due on a financially able person or on a person not financially able, one-third of the mudabbar slave is manumitted, and whenever some amount is settled of the debt or whenever some of the absent property is recovered, the slave becomes manumitted by one-third of that amount until completely manumitted from one-third (of the whole estate). It is acceptable for a non-adult to pronounce tadbir provided the person is ten years of age or older and understands what tadbir is. What I have said regarding males also applies to females of nine years of age or older.[1255] The tadbir is void if the slave owner is murdered by the mudabbar.

58. Mukatab

58.1

He said: If a *mukatabah* contract is made with a person's male or female slave based on installments and the contract is fulfilled, the slave becomes free and the *wala'* of such a slave belongs to the contracting slave-master (*mukatib*) and one-fourth of what is agreed upon is bestowed upon the *mukatab*, because of what (Allah) the Most Exalted said: (...and bestow upon them of the wealth of Allah which He has bestowed upon you...).[1256] If the amount of the contract is paid up in advance of its due time, the contracting slave master is bound to accept it and free the slave immediately according to one of two reports. According to the other report, if the contracted amount is owned by the slave, he becomes free.[1257] If after part of the contract has been paid the slave dies with enough to pay (for his freedom) or more than enough it goes to the slave master according to one of two reports. According to the other report, the master is entitled only to the remaining amount of the contract, and the remainder goes to the freed slave's heirs.[1258] The *mukatab* is still considered *mukatab* on his master's death and any amount paid towards the contract is divided between the master's inheritors according to inheritance laws, and the *wala'* belongs to the

master. If unable to pay up, the mukatab becomes a slave to all the heirs. The mukatab may not be prevented from travelling and cannot marry without the master's permission. The mukatab cannot be sold anything worth one dirham for two dirhams.[1259]

He said: A man cannot have sexual intercourse with his female mukatab unless that is stipulated. If he has sexual intercourse without that stipulation he is liable to a punishment less than that of a zani and she is entitled to a marriage portion equivalent to her value. If she becomes pregnant by him, she has the option either to declare herself unable to complete the payment and be treated as umm al-walad or to continue the payment according to the contract. If it is paid up she is manumitted. If unable to complete the payment she is manumitted on his death. If he dies before she becomes unable to pay up then she is manumitted because she is treated as umm al-walad and she is not liable to payment of the remaining amount of the contract, and anything remaining in her hand goes to the heirs of her master.

If mukatabah contact is made on one-half of a slave and the agreed amount is paid and the same amount is paid the master, one-half of the slave is free according to the mukatabah contract if the contracting slave master is not a financially able person. If financially capable, the slave is completely manumitted and the slave master must pay half

the value of the slave to the other partner (if another partner is involved). If manumitted, the _mukatabah_ allows a year to pass by while the property is in his hand before offering its _zakah_ provided it reaches _nisab_. If the _mukatab_ fails to pay an installment (for his freedom) until another installment is due, the master may, if so desired, declare him incapable (of fulfilling the contract) and he may then be treated as a non-_mukatab_ slave, and a year is allowed to pass over any installments received from him towards the contract before _zakah_ is offered. The crime committed by the _mukatab_ is first considered for payment before payment is made toward the _mukatabah_ contract. If the _mukatab_ is unable to pay for the crime committed, the slave owner has the option either to redeem him for what he is worth if it is less than the value of the committed crime or to give him up. If a _mukatabah_ contract is made with a slave and then declared _mudabbar_, the slave becomes free if the contract is carried out. If the slave owner dies before the contract is carried out the slave is manumitted by _tadbir_ if one-third (of the estate) can cover what remains due on him by the contract. Otherwise, one-third of him is manumitted and deduction is made from the contract according to how much of the slave has been manumitted and the remainder becomes binding. If the _mukatab_ claims the contract has been fulfilled and presents a witness to that effect he takes an oath corroborated by the witness and

becomes free. The mukatab carries out the kaffarah only by fasting. The children of a female mukatab born at the time of the mukatabah contract are manumitted by the manumission of their mother. It is permissible to sell the mukatab[1260] in which case the purchaser assumes the place of the slave-owner and the mukatab becomes free if what is due from the contract is settled and the wala' belongs to the purchaser. If the seller does not make it clear to the buyer that the slave is a mukatab, the buyer has the option either to return the slave for his money or to keep him in addition to accepting the difference in value between a non-mukatab slave and a mukatab. If the mukatab owns his father or a close relative within the prohibited degree of marriage they are not manumitted until the mukatab has paid up (for his own freedom) while they are under his ownership. If unable to do so, they are slaves to the owner of the mukatab.

If a slave belonging to three people comes forward with three hundred dirhams and says: 'Sell me to myself for this amount' and is accepted, and if after returning to them for the writing of the contract one of them denies having received anything and the other two partners testify that he has accepted something, the slave is free by the testimony of the two partners provided they are reliable, and the other partner shares with the two partners what has been received by them and nothing is binding on the slave.

If the slave owner says to the slave: 'I pronounced you mukatab for two thousand (dirhams)' and the slave says: 'It was for one thousand (dirhams)', the slave owner's word is taken corroborated by his oath.[1261] A person has the right to manumit a female slave or to pronounce her a female mukatab, reserving ownership of what is in her womb, or to manumit what is in the womb and reserve ownership of the mother.[1262]

He said: It is acceptable if the mukatab advances some payments towards the contract to his owner in order for some burden of the contract be taken from him.[1263]

If a slave belongs to two people and one of them pronounces him mukatab, and before the contract is carried out the other partner manumits the slave while he is financially capable, the slave is completely free and the other partner claims half the slave's value from the manumitter. If the mukatab is incapable of carrying through the contract and is put back into slavery while some alms has been offered him, the alms is considered as his master's.[1264] If each of two mukatab slaves is bought by the other, the first person's buy is valid and the last is invalid. If a stipulation is made by the master to reserve the wala' for any slave desired (let it be known to him that) wala' belongs to the manumitter and such a stipulation is invalid. If a mukatab is captured by an enemy and then purchased by a man who takes him to his master, the master

may, if he so desires, accept him back according to what he had been purchased for, and he remains within his contract as mukatab. If the master wishes not to take him back, he remains the property of his purchaser and left to complete payment of the remaining portion of the contract after which time he is manumitted, and the wala' belongs to whom payment is made to.

59. Manumission of Umm Walad

59.1

He said: The laws pertaining to umm walad are the same as for the female slave in every case, except that the umm walad cannot be sold. If sexual intercourse is had with a female slave through marriage while she belongs to another person and then she becomes pregnant by the husband who now owns her in the state of pregnancy,[1265] the fetus is manumitted and the latter owner has the right to sell her. If under his ownership she becomes pregnant by him conceiving a free child and she delivers anything with visible human nature, she becomes thereby umm walad. If he dies she becomes free even if nothing else is owned besides her. If a female slave becomes umm walad according to our description and then delivers a child for other than her owner, the child has the status of the mother manumitted on the death of her owner. If an umm walad belonging to a

Christian accepts Islam, the man is prevented from having sexual intercourse or pleasure with her, and is compelled to provide maintenance to her. If he also accepts Islam she becomes lawful to him; and if he dies before that, she is manumitted.[1266]

If an umm walad is manumitted on the death of her owner, anything in her possession goes to the heirs of her owner. If she is made the beneficiary of what is in her hand by a will, she becomes entitled to it if it is borne from one-third.

If a person dies leaving an umm walad, she is required to undergo one menstrual cycle for her ʿiddah. If an umm walad commits a crime, her owner redeems her by her value or less. If the crime is repeated, her owner redeems her as has been described.[1267]

It is permissible for a person to make the umm walad the beneficiary or executor of a will. She can be married to another man even if she expresses dislike.[1268] The person who slanders her is not liable to hadd.[1269]

It is considered reprehensible for the umm walad to pray bareheaded, but her prayer is acceptable.[1270] The umm walad is liable to payment of her value if she kills her owner.[1271] Allah knows best.

[All praise is due to Allah alone. May the blessings of Allah be upon him after whom there is no other Prophet. The blessed book has been completed - praise be to Allah -

through His help and good fortune in accordance with the school of al-Imam al-Rabbani Ahmad bin Muhammad bin Hanbal al-Shaybani -may Allah be pleased with him. Its writing was completed during the day time on Monday, Jumada 'l-Ula[1272] in the year 970.]

4.4 Annotations

1. EI^2 under al-Khiraki.
2. Ibn Khallikan (608-681 A.H.), Wafayat, vol.III, p.441. Ibn Athir, al-Lubab, vol.I, p.435. al-Baghdadi, Tarikh, vol.VIII, p.59, see also Tabaqat, vol.II, p.45,p.119.
3. Ibn Qudamah, M.W.S.K., vol.I, pp.3-4. Al-Baghdadi, Tarikh, vol.VIII, p.60.
4. Ibn Taghribirdi, al-Nujum, vol.III, p.178. Tabaqat, vol.II, pp.46-47. See also al-Baghdadi, Tarikh, vol. VIII, p.60.
5. Ibn Qudamah, M.W.S.K., vol.I, pp.3-4; Sezgin, G.D.A.S band 1, p.512; Ibn Rajab, al-Dhayl, pp.12-13; EI^2 under al-Khiraki.
6. Ibn Kathir (d.774 A.H.), al-Bidayah, vol.VI, p.214; M.W.S.K., vol.I, pp.3-4.
7. Ibn Kathir, al-Bidayah, vol.VI, p.214; al-Baghdadi,Tarikh, vol.II, p.234.
8. Sezgin, G.D.A.S., Band 1, p.512; EI^2 under al-Khiraki.
9. al-Baghdadi, Tarikh, vol.II, pp.234-235; Ibn Kathir; al-Bidayah, vol.VI, p.214; EI^2 under al-Khiraki.
10. al-Safadi, al-Wafi, vol.XXII, p.456; Ibn Taghribirdi, al-Nujum, vol.III, p.289.
11. Ibn Khallikan, Wafayat, vol.III, p.441; M.W.S.K.,vol.I, pp.3-4; al-Zirikli, al-A'lam, vol.V, p.202; EI^2 under al-Khiraki.
12. Ibn Kathir, al-Bidayah, vol.VI, p.214.
13. Sezgin, G.D.A.S., Band 1, p.513. See also Juz' fih fawa'id Abi'l-Qasim, p.1b (3823), Zahiriyyah. Also see al-Dhahabi (d.748 A.H.) Min al-Mushtabah fi'l-Rijal, vol.I, p.226.
14. Ṭāshköprüzāde, Miftah, vol.II, pp.106-107.
15. Ṭāshköprüzāde, Miftah, vol.I, p.393.
16. Ṭāshköprüzāde, Miftah, vol.I, p.393.
17. Ibn Taghribirdi, al-Nujum, vol.III, p.178; Sezgin, G.D.A.S., Band 1, p.513.
18. al-Shawish, Mukhtasar, p.155.
19. al-Shawish, Mukhtasar, p.4.
20. al-Shawish, Mukhtasar, p.4.
21. EI^2 under al-Khiraki. See also al-Turki, Usul, p.709, p.711.
22. Tabaqat, vol.II, p.171. EI^2 under al-Khiraki and under Hanabila.
23. Sezgin, G.D.A.S., Band 1, p.513; EI^2 under al-Khiraki.
24. Sezgin, G.D.A.S., Band 1, p.513.25. al-Shawish, Mukhtasar, p.8.
25. al-Shawish, Mukhtasar, p.8.
26. al-Shawish, Mukhtasar, p.8.

27. Ibn Badran, *Kifayah*, p.3.
28. *al-Mughni*, vol.I, p.3.
29. Ibn Jawzi, *al-Muntazam*, vol.VI, p.346.
30. *al-Mughni*, vol.I, p.3.
31. Ibn Kathir, *al-Bidayah*, VI, p.214.
32. See sections 33, 43.2.
33. See sections 44.1, 47.1.
34. See sections 27.1, 28.1.
35. See sections 26.1, 39.1.
36. See note no.31.
37. See al-Shawish, *Mukhtasar*, pp.17,24,25,27,45,79.
38. al-Shawish, *Mukhtasar*, pp.24,28,30,31,35,46,128.
39. al-Shawish, *Mukhtasar*, p.58.
40. Ibn Kathir, *al-Bidayah*, vol.VI, p.214.
41. *Tabaqat*, vol.II, p.140.
42. *Tabaqat*, vol.II, p.171.
43. *Tabaqat*, vol.II, pp.155-156.
44. al-Shawish, *Mukhtasar*, p.7.
45. *M.W.S.K.*, vol.I, p.2.
46. al-Shawish, *Mukhtasar*, p.8; Ibn Badran, *Kifayah*, pp.2-3.
47. al-Shawish, *Mukhtasar*, p.8; Ibn Badran, *Kifayah*, pp.2,4.
48. al-Shawish, *Mukhtasar*, p.9.
49. Ibn Badran, *Kifayah*, Maktabat al-Salafiyyah, Damascus, 1342 A.H.
50. Ibn Ali, *Mukhtasar al-Fatawa*, p.283.
51. Ibn Qayyim, *Zad*, vol.IV, p.123.
52. *M.W.S.K.*, vol.I, p.2.
53. Tashkopruzade, *Miftah*, vol.I, p.194.
54. Ibn Rajab, *al-Dhayl*, vol.I, pp.12-13.
55. *Tabaqat*, vol.II, pp.76-118, pp.120-121. *EI*^{2} under al-Khiraki.
56. See notes marked with (D).
57. This expression is known as '*basmalah*' recommended at the beginning of every act or statement. It is reported that the Prophet -may the blessing and peace of Allah be upon him- said: "Any act that is not begun with 'In the name of Allah the Beneficent, the Merciful' is considered leprotic'. See al-Sabuni, *Safwat al-Tafasir*, vol.I, p.23. See also al-Sabuni, *Mukhtasar Ibn Kathir*, vol.I, pp.18-19.
58. *Qur'an*:*Surah* 1:1.
59. To ask blessings on the Prophet is an obligation enjoined on all believers in Allah. *Qur'an*:*Surah* 33:56.
60. Muhammad is described in the *Qur'an* as the seal of the Prophets. Cf *Qur'an*:*Surah* 33:40.
61. 'Mothers of the Faithful' is a title that specifically applies to the wives of the Prophet Muhammad. It indicates their special place and dignity in the spiritual life of the Faithful as

their mothers. See Qur'an,Surah 33:6.

62. This is a nisbah adjective from the word Khirqah, a piece of cloth. See al-Fayruz-Abadi, al-Qamus, under al-Khirqah. It pertains to the seller of (pieces of) cloth. 'Umar bin Husayn used to sell pieces of cloth. See Ibn Khallikan, Wafayat, vol.III, p.441. See also al-Zirikli, al-A'lam, vol.V, p.202. Also see Tashkopruzade, Miftah al-Sa'adah, vol.II, p.107. Hence the attachment of the nisbah al-Khiraqi to his name though there is another probability that he might have gained this nisbah from his father Abu 'Ali al- Khiraqi, to whom the nisbah was earlier applied. See Ibn Taghribirdi, al-Nujum, vol.III, p.178. There were some other people beside Umar bin Husayn and his father, also known in Baghdad and Isfahan by the nisbah al-Khiraqi. See Ibn al-Athir, vol.I, p.435.

63. Madhhab is generally defined as a way that one pursues in respect of doctrines and practices in religion, and particularly a system of jurisprudence (fiqh) formed by a learned Islamic legal and religious scholar known as Imam, such as the four orthodox schools of law: Hanafi, Maliki, Shafi'i, Hanbali; and the Shi'i schools. Lane. Hodgson, The Venture of Islam, vol.I, pp.335 & 515. For information on the history and development of such schools of law, see Schacht, Introduction, pp.57-68; Schacht, Origins, pp.6-10; Islamic Law Bibliography, vol.78, no.1, pp.104-105.

64. Ahmad bin Hanbal was the founder of the Hanbali school of law. He was born in 164/780 in Baghdad. He studied in Baghdad lexicography, jurisprudence and tradition (hadith) then devoted himself from 179/795 to the study of tradition, making a series of journeys in Iraq, Hijaz, Yaman, and Syria. From 183 A.H. onwards his principal teacher was Sufyan bin 'Uyayna (d.198/813-4) the greatest authority of the school of the Hijaz. Ibn Hanbal was glorified as the most faithful defender of the sunnah because of his firm stand and strong position against the doctrine of the Mu'tazilah which was officially recognized by the Caliph al-Ma'mun Ibn Hanbal vigorously refused to acknowledge the creation of the Qur'an, contrary to orthodoxy. The Musnad, a collection of traditions, is considered the most celebrated of his works. He died in Baghdad in 241/855. Sezgin, G.D.A.S., pp.502-503. El^2 under Ahmad bin Hanbal. For further biographical information see al-Turki, Usul, pp.17-69. For other bibliographical sources see El^2 under Ahmad bin Hanbal. See also Sezgin, G.D.A.S., p.503. It is interesting to note that Ibn Hanbal's death according to El^2, occurred in the month of Rabi I, 241/855 at

the age of 75 while Ibn Qudamah's al-Mughni has the following quotation from the son of Ibn Hanbal: "He died in Rabi' al-Akhar (Rabi II) in the year 241 at the age of seventy-seven". See Ibn Qudamah (d. 620/1223), al-Mughni, vol.I, p.6. There is no contradiction between the reports on how many years Ibn Hanbal lived. He lived seventy-five solar years 780 to 855 C.E. indicating that the reference in El^2 is to the solar years, corresponding to seventy-seven lunar years 164 to 241 A.H.; but the question is, did he die in the month of Rabi I or Rabi II? This is where there is inconsistency. Some reports indicate that it was in the month of Rabi I and others state that it was in the month of Rabi II. See al- Turki, Usul Madhhab, p.46. Similarly, reports related to the month of his birth have not been consistent. Here again, some reports mention Rabi I and others mention Rabi II. ibid, p.32.

65. Taharah is a term generally used for the act of performing total ablution (ghusl) or partial ablution (wudu) or the cleansing of the private parts (Istinja). Lane.

66. Wudu signifies the act of performing partial ablution as prescribed in the Qur'an. See Qur'an:Surah 5:6

67. Different reports are related from Ibn Hanbal in regard to clean water mixed with other clean substances resulting in the change of taste of the water or its color or its odor. According to one report purity cannot be achieved through the use of such water. Abu Ya'la, a Hanbali jurist (d.458 A.H./1066 C.E.), mentions that this report is more authentic. Another report from Ibn Hanbal indicates that it is permissible to perform wudu with such water. al-Mughni, vol.I, p.11.

68. Ibn Qudamah explains that this view apparently is what is held by the Hanbali school. However, according to another report from Ibn Hanbal, such water is clean and may be used for purification. al-Mughni, vol.I, p.16.

69. Qullah an earthen water vessel. The kind of water vessel meant here is that of the people of Hajar, a city in Yaman known for its large jars which were well known at the time of the Prophet and two of which are equivalent to five qirbahs, and one qirbah is equivalent to 100 Iraqi ritl. Hence two qullahs are equivalent to 500 Iraqi ritl. This is apparently the law upheld by the Hanbali school. Another report attributed to Ibn Hanbal and related in a manner implying that it is doubtful or is a mere assertion, states that two qullahs are equivalent to four qirbahs. al-Mughni, vol.I, p.19.

70. Qirbah is a kind of skin used for water. Lane .

71. These are artificially confined body of water accessible to the pilgrims on the way to Makkah and serving as a watering place for them. Such body of water cannot be rendered impure by any impurity dropping into it so long as it does not change the taste, color or odor of the water. According to Ibn Qudamah, no differences of opinion are reported regarding this case. al-Mughni, vol.I, p.30.

72. On the whole, purity can be achieved, according to al- Khiraqi through any of the following: a) absolutely clean water not mixed with any other substance. b) clean water mixed with other substance provided it is a small quantity that does not change the taste, or color or odor of the water. c) Water measuring two qullahs or five qirbahs into which an impurity, except urine or diarrheic human feces, has dropped and which does not change the taste or color or odor of the water. d) Water originating as from the ponds on the way to Makkah. e) A body of water such as originating from a large quantity of water that cannot be drained. f) A small quantity of water in which has died any living thing that has no flowing blood.

73. Tayammum is the act of wiping the face and the hands as prescribed in the Qur'an. See Surah 4:43 and Surah 5:6. See Section 1.9.

74. (D) Abu Bakr opines that it is not obligatory to pour out the contents of both vessels before tayammum is carried out, Tabaqat, vol.II, p.76 Ibn Qudamah endorses the opinion of Abu Bakr. See al-Mughni, vol.I, p.46.

75. No differences of opinion are reported in the Hanbali school regarding the uncleanness of the leather from a dead animal before it is tanned. However, after such a leather has been tanned, according to the widely known opinion (al-Mashhur) of the school it is still considered unclean. Another report from Ibn Hanbal states that the leather from a dead animal clean during its life time is considered clean after it is tanned. al-Mughni, vol.I, p.49. Obviously al-Khiraqi holds in the case of a tanned leather from a dead animal the most widely known opinion of the school. This apparently is based on the understanding that the Qur'an forbids dead animals (see Surah 5:3) hence its leather is included as part of what is forbidden since it is part of the animal. Similarly, it could be concluded that al-Khiraqi's opinion is that a vessel made from the bones of a dead animal is unclean because the bones are part of the dead animal forbidden on the basis of the same text of the Qur'an, i.e. Surah 5:3. It is interesting to note here the discussion of leathers and bones under the

heading: vessels. Apparently vessels used to be made from leathers and bones.

76. (D) According to Ibn Qudamah, it is forbidden to perform wudu' in a golden or silver vessel. Hence the arabic word (yukrahu) for what is reprehensible is interpreted here by Ibn Qudamah to mean forbidden and unacceptable based on the fact that there were no differences of opinion (khilaf) among the Hanbali scholars regarding the use of golden or silver vessel as forbidden. al-Mughni, vol.I, p.55. Abu Bakr believes that it is invalid and unacceptable to perform wudu' from a golden or silver vessel because the wudu' is being performed from a forbidden vessel. Ibn Abi Ya'la endorses the opinion of Abu Bakr though al-Khiraqi's opinion is that of the majority. See Tabaqat, vol.II, p.76.

77. This refers to the wool and the hair from a dead animal that was clean during its life time. According to Ibn Qudamah, another report from Ibn Hanbal indicates that such a wool or hair is unclean. al-Mughni, vol.I, p.59.

78. That is the sunnah acts of the partial ablution. These are acts recommended for this kind of ablution. Hence, the term sunnah here stands for the second of the five categories under which actions are considered from the legal point of view. It is also called, according to this sense, mandub or mustahabb. Sunnah in this sense is distinguished from sunnah as the 'normative practice' of the community or the example of the Prophet. El[1] under sunnah. Schacht,Introduction, p.121.

79. The primary signification of this word is prayer, supplication, or petition, then applied to signify a certain well-known mode of religious worship beginning with the pronouncement of takbir (Allah-u-Akbar) and ending with the pronouncement of taslim (As-salamu 'alaykum). Lane.

80. It signifies midday, or noon, or the time when the sun declines from the meridian or the time immediately following the declining of the sun. Zuhr prayer: is the act of religious worship performed during this time.

81. (D) This opinion is that of the majority. Abu Bakr opines that it is obligatory to wash the hands upon waking from a night's sleep based on the report of Abu Dawud through his chain of reporters (isnad) from Abu Hurayrah and from the Prophet -may the blessings and peace of Allah be upon him- who said: 'Anyone, upon waking from a night's sleep, must not dip the hands into the (wudu') vessel until they are washed three times because the person does not know where the hands lied at night', Ibn Abi Ya'la confirms the

authenticity of this report. See Tabaqat, vol.II, pp.76-77.

82. (D) Tasmiyah is to invoke the name of Allah by saying: Bismillah (In the name of Allah). Note that this is the view held by most Hanbalis according to Ibn Abi Ya'la. Abu Bakr opines that pronouncement of tasmiyah is obligatory, based on what is related from Ibn Hanbal through his chain of reporters from Abu Sa'id al-Khudri who said that the messenger of Allah - may the blessings and peace of Allah be upon him- said: "No wudu' performed is considered perfect until Allah's name was mentioned (before)". Ibn Abi Ya'la confirms the authenticity of this report. See Tabaqat, vol.II, p.77.

83. Ibn Qudamah only mentions this in his commentary of the Mughni. See, al-Mughni, vol.I, pp.77-78.

84. That is, to cleanse the private parts with water (istinja'), or to cleanse the private parts with little stones (istijmar).

85. See Qur'an, Surah 5:6.

86. The expression 'Allah knows best' as mentioned by al-Khiraqi is indicative of the differences of opinion in regard to whether or not it is permissible to read or touch the Qur'an in a state of sexual impurity or menstruation or after childbirth bleeding. See, al-Mughni, vol.I, p.106, pp.108-110. Note that al-Khiraqi has used this expression exactly sixty-nine times in the whole of the Mukhtasar regarding certain legal cases. In each case, the expression is either indicative of the differences of opinion among scholars in regard to that case, and which are based most times in the Hanbali school on the different reports related from Ibn Hanbal, or it may indicate that al-Khiraqi is absolutely uncertain or indecisive on the finality of his legal opinion, hence the attribution of absolute knowledge of the case to Allah signalling that this matter calls for careful study and decision.

87. (D) This view is held by most Hanbalis. According to Abu Bakr only little stones are good enough for cleansing the private parts (istijmar). See al-Mughni, vol.I, p.115. See also Tabaqat, vol.II, p.77.

88. (D) Abu Bakr holds the view that it is not acceptable to use fewer than three little stones for cleansing. See Tabaqat, vol.II, pp.77-78; al-Mughni, vol.I, p.117.

89. Ibn Qudamah mentions that there are two types of loss of consciousness. 1) loss of consciousness due to sleep in which case al-Khiraqi explains that a short sleep does not affect one's state of ritual purity; 2) the loss of consciousness due to other than sleep such as insanity, fainting, intoxication or using

drugs which cause the loss of mind and so on, in which case ritual purity is lost absolutely. Ibn Qudamah claims unanimity of opinion on this case. See, al-Mughni, vol.I, p.128.

90. Apparently in the Hanbali school, what voids partial ablution (wudu') in terms of what is considered much has no limit other than what is considered excessive. Excessiveness is determined according to al-Khallal (d.311/923-4) by a person's judgment. To Ibn 'Aqil (d.513/1119-20) another Hanbali scholar the determination is made by men of the middle class. See al-Mughni, vol.I, p.137.

91. According to a report from Ibn Hanbal, this case pertains to the person who is aware of what is being eaten, and not to the person who is not aware of it. al-Khallal confirms that this is the final position taken by Ibn Hanbal regarding this subject. al-Mughni, vol.I, p.138.

92. There are differences of opinion in the school regarding whether or not wudu' should be performed after washing the deceased. Most Hanbali scholars opine that it is obligatory to do so after the deceased has been washed. This, according to Ibn Qudamah, is because in most cases hardly could the deceased be washed without touching his or her private parts. See al- Mughni, vol.I, p.141.

93. This is the most widely accepted opinion of the school. However, there are two other reports from Ibn Hanbal. One report points out that touching the opposite sex absolutely voids one's wudu'. Another report indicates that physical contact with the opposite sex absolutely does not void one's wudu'. al-Mughni, vol.I, pp.141- 142.

94. Ghusl signifies a complete ritual washing of oneself or in other words the act of performing total ritual ablution. See note no.65.

95. This case actually pertains to a person who returns to Islam after having apostatized from it. It becomes necessary for such a person to perform the ritual bathing before his or her prayers can be accepted.

96. (D) Abu Bakr is reported, according to Ibn Abi Ya'la's father to have said that it is only recommendable for a person to perform ritual bath if the person had not been sexually impure at the time of his or her disbelief (kufr). Ibn Abi Ya'la mentions that this view is held by most hanbalis. Ibn Abi Ya'la added saying: "I had seen in the book al-Tanbih by Abu Bakr the mention that it is obligatory to perform ritual bath". See, Tabaqat, vol.II, p.78.

97. This is the most widely known opinion of the school based on a report from Ibn Hanbal. Another report states that it is permissible for a man or a woman to

use such a surplus of water for purification. Ibn Aqil holds this view. al-Mughni, vol.I, p.157.

98. Three different reports are related from ibn Hanbal regarding when the feet have to be washed when ritual purity is intended. One report indicates that they are washed right at the end of performing partial ablution (wudu'). Another report mentions that they are washed after the completion of the total ablution (ghusl). The third report explains that it makes no difference whether they are washed before or after the completion of the total ablution. Ibn Qudamah concluded from the third legal opinion that, Ibn Hanbal probably interpreted the three variant hadiths upon which all these opinions are based to mean that the point of time at which the feet are to be washed is not mainly the concern. What is mainly concerned about is the washing of the feet. al-Mughni, vol.I, p.160.

99. According to another report from Ibn Hanbal, the performance of such a ghusl cannot satisfy the obligation of wudu' unless wudu' also had been performed before or after the ghusl. al-Mughni, vol.I, p.161.

100. Ibn Qudamah mentions in the commentary that one sa' is equivalent to five and one-third Iraqi ritl indicating that Iraqi ritl is what is meant. See al-Mughni, vol.I, p.163.

101. Ibn Qudamah defines Iraqi ritl as equivalent to one hundred and twenty eight and four-seventh dirhams which is also equivalent to ninety mithqals; and one mithqal equals to one and three-seventh dirhams. al-Mughni, vol.I, p.164.

102. A sa' is equivalent to five and one-third Iraqi ritl (see note no.100). One sa' is therefore equivalent to four mudds since one mudd, according to al-Khiraqi's definition, is equivalent to one and one-third Iraqi ritl.

103. There are differences of opinion in the school about whether or not a woman must undo her hair to cleanse herself from menstrual bleeding by means of performing the ritual bath. Some Hanbalis hold the view that it is obligatory to do so while others believe that it is only recommendable. al-Mughni, vol.I, p.166.

104. (D) Ibn Abi Ya'la confirms the authenticity of the report on which this view is based. According to Ibn Qudamah, this stipulation is made based on a widely known report from Ibn Hanbal. On the contrary, Abu Bakr holds the view that the search for water is not conditional and so the search is not obligatory since the person does not know where to find the water. The latter view is also based on another report from Ibn

Hanbal. See Tabaqat, vol.II, p.78; see also al-Mughni, vol.I, p.174.

105. Ibn Qudamah mentions another report from Ibn Hanbal that Ibn Hanbal used to hold the view that such a person could continue the prayer though water had become available, but points out again that there is still another report indicating that Ibn Hanbal later on gave up this opinion. Ibn Qudamah quoted al-Marwazi (d.275/899) as saying: "Ahmad said: I used to say such a person could continue the prayer until my contemplation after which I found out that most hadiths point out that he or she must discontinue the prayer". See al-Mughni, vol.I, p.197.

106. Khuff is a kind of boot worn upon the foot.

107. Al-Khiraqi is hereby referring to a person who has been affected by a minor impurity which renders him unclean, because the permissibility of wiping over the khuff only pertains to minor impurity. It is not permissible to wipe over the khuff if affected by a major impurity. al-Mughni, vol.I, p.207.

108. Ibn Qudamah mentions that another report from Ibn Hanbal states that in such a case it is acceptable to wash only the feet. al-Mughni, vol.I, p.210.

109. According to Ibn Qudamah, another report from Ibn Hanbal indicates that the starting point is considered as from the time of the wiping after falling into the state of impurity. al-Mughni, vol.I, p.212.

110. (D) Ibn Abi Ya'la confirms the authenticity of the report which forms the basis of al-Khiraqi's views. Abu Bakr and his master al-Khallal hold the view that in such a case the person continues to wipe over the khuff as a traveller. Ibn Abi Ya'la quotes al-Khallal as saying that Ibn Hanbal gave up the first view. Tabaqat, vol.II, p.78; see also al-Mughni, vol.I, p.213.

111. Ibn Qudamah's version states that in such a case "the khuff is removed as soon as the person becomes a non-traveller or returns from the journey". See al-Mughni,vol.I, p.213. This statement reads right and reasonable because in such a case it is no longer possible to continue wiping over the khuff since the law as mentioned earlier in the text concerning wiping on the khuff - permits wiping in a non-travelling state for only a day and night. See section 1.10.

112. This is the ghusl performed after one's menstrual period has ended at which time the person is considered as in a state of continuous vaginal bleeding (mustahadah) and in which case she is treated according to the laws pertaining to such a state.

113. This is the case of a woman whose blood is such that it could not be distinguished one form from the other and also she could not remember her days. According to Ibn Qudamah, if she is such that she cannot remember both the time of the blood appearance and the total number of days of her period, she is the one given the name by the jurists (fuqaha) as 'the confused one' (mutahayyirah), she should then relax each month for six or seven days after which time she must perform her ritual bath and then afterwards be treated as a woman experiencing continuous vaginal bleeding (mustahadah). al-Mughni, vol.I, pp.233-234.

114. There are two other reports from Ibn Hanbal in connection with this case, one of which is that such a woman should relax a day and a night each month. The other report states that she must relax the maximum duration of menstruation. al-Mughni, vol.I, p.240.

115. This is a woman in a state of continuous vaginal bleeding (Mustahadah).

116. This is according to one report from Ibn Hanbal. Another report from him conveys that it is absolutely lawful to have sexual intercourse with the mustahadah. al-Mughni, vol.I, p.246.

117. A discharge from the prostate gland of a thin humour occasioned by amorous toying or by kissing. Lane.

118. It is interesting to note that Hanbali scholars, according to Ibn Qudamah, have differed in their understanding of what al-Khiraqi meant by his statement: "If the bleeding resumes, she should not be upset by that". Hanbali scholars such as Abu 'l-Hasan al-Tamimi (d.371/981), and Ibn 'Aqil assume the statements to mean, if the bleeding resumes after her days of menses are over extending beyond the maximum monthly period. Another Hanbali scholar Abu Hafs al-Ukbari (d.387/998) interprets it to mean, if the bleeding resumes at any time whether within her known days of her period or after her period is over. See al- Mughni, vol.I, p.259.

119. Obviously, al-Khiraqi is cautious about the nature of a woman's bleeding after the age of fifty until the age of sixty. Hence, he takes the position that such a woman must not give up performing her prayers or fasting, and must also repeat the obligatory fast as a precaution, indicating that there are differences of opinion regarding this matter.

120. Al-Khiraqi believes that a woman certainly has no exception of menses when she is over sixty. Probably this conviction is based upon the fact that no woman was ever known to him to have had her menses after the age of sixty. Interestingly, Ibn Qudamah mentioned a woman who gave birth just at the age of

sixty to Musa bin ‘Abdallah bin Husayn bin Hasan bin Ali bin Abi Talib. Her name was Hind bint Abi Ubaydah bin Abdallah bin Zam‘ah. See al-Mughni, vol.I, p.263.

121. This legal statement is followed in descending order of stringency by the following legal opinions: a) That the mustahadah must perform a ritual bath each day for Zuhr and ‘Asr prayers, and another bath for Maghrib and ‘Isha prayers, and still another bath for Fajr prayer. b) That she must perform the ritual bath only once each day after it has been performed for completing the menses. c) That she must perform wudu' for each prayer after the ritual bath has been performed for completing the menses, and that is valid. According to Ibn Qudamah, this last view is accepted by most scholars. See al-Mughni, vol.I, p.265. Obviously al-Khiraqi is among those who incline towards the last view.

122. ‘Asr signifies afternoon, or evening, or the last part of the day. Hence ‘Asr prayer is the religious worship performed during this time which commences about mid time between noon and nightfall. Lane.

123. Different reports have been related from Ibn Hanbal regarding when the prime time is over. One report states that it is over when the shadow of anything is twice its height. Obviously, this is the view held by al-Khiraqi. Another report from Ibn Hanbal conveys that it is not over until the sun turns yellow. According to Ibn Qudamah this latter report is the most authentic of what has been related from Ibn Hanbal regarding this matter. al-Mughni, vol.I, p.273.

124. Rak‘ah signifies a single act of prayer consisting of the standing and the ruku' or lowering of the head so that the palms of the hands reach the knees, and the two subsequent prostrations. Lane.

125. Such as if it is delayed due to the performing of ritual bath after the menses has been completed, or due to a non-Muslim accepting Islam, or a child becoming adult, or an insane regaining sanity, or a person waking up from sleep or recovering from an illness. al- Mughni, vol.I, p.273.

126. Maghrib originally signifies the place or point of sunset and is likewise used to signify the time of sunset. Hence the prayer of this time is known as Maghrib prayer. Lane.

127. (D) Abu Bakr holds the view that the disappearance of the twilight is determined only by the disappearance of the red in the sky for both the traveller and non-traveller. This view is also held by Abu Yusuf and al- Shaybani of Hanafi school, and al-Shafi‘i. Abu Hanifah holds the view that the twilight is the disappearance of the white in the sky for both the

traveller and the non-traveller. See Tabaqat, vol.II, p.79; see also al- Mughni, vol.I, pp.277-278. It appears al-Khiraqi does not disagree with Abu Bakr on what is indicative of the disappearance of the twilight, that is the disappearance of the red in the sky. However, al- Khiraqi distinguishes himself here as being more cautious, hence in the case of a non-traveller who is usually surrounded by buildings and city walls which could obstruct the view of the red, al-Khiraqi stipulates the disappearance of the white.

128. 'Isha' signifies the time of nightfall, that is the first or beginning of the darkness of night. According to Lane, this is the sense in which it is generally used, and always when it is used as applied to the religious worship performed during this time that is 'Isha' prayer, meaning the prayer of nightfall. Lane. It is so called final 'isha' in distinction from the maghrib prayer both of which are known as 'isha'an, the two 'isha's or two evening prayers. See al-Qamus al Muhit. However if the term 'isha is used absolutely it always refers to the final 'isha' prayer.

129. Different reports are related regarding when the prime time for 'isha' prayer is considered over. According to one report from Ibn Hanbal it is over when a third part of the night has passed. According to another report, it is over when half of the night has passed. al-Mughni, vol.I, p.278. Obviously al-Khiraqi endorses the first view.

130. This is also called the true dawn (al-Fajr al Sadiq) as opposed to the first dawn which is called the false dawn (al-Fajr al-Kadhib). Hence the dawn is twofold, the first being the false dawn which rises without extending laterally, and which appears black presenting itself like an obstacle on the horizon. The second dawn is the true dawn described as the rising and spreading dawn, that is it appears rising, and fills the horizon with its whiteness. Lane.

131. Subh prayer is the same as Fajr prayer. It is known as morning prayer or dawn prayer because its time begins with the appearance of the true dawn which is the light of morning until sunrise. See Laoust, Precis, p.20.

132. This legal opinion is based upon what was reported from the two companions of the Prophet: 'Abd al-Rahman bin 'Awf and 'Abd-Allah bin 'Abbas who said that the menstruating woman on entering into a state of purity with only one rak'ah remaining before the appearance of the dawn should perform both Maghrib and 'Isha' prayers in addition to the Fajr prayer, and on entering into a state of purity likewise before sunset should perform both Zuhr and 'Asr

prayers in addition to the sunset prayer. Some jurists however, hold the view that only the prayer at whose time she enters into the state of purity must be performed. See al-Mughni, vol.I, p.287. However, it could be pointed out that Ibn 'Awf and Ibn 'Abbas probably recommended the performance of two prayers precautiously because of the possibility that the menstruating woman could have entered into the state of purity at the last moment of Zuhr or Maghrib prayer while being unaware. Similarly this case is applicable to the child reaching his majority just before dawn or sunset. However, in the case of a disbeliever who accepts Islam before dawn or sunset it is possible to ascertain the time of his acceptance of Islam and in whose case performance of two prayers as mentioned above might not be necessary.

133. According to Malik and al-Shafi'i it is not necessary to make up prayers that were obligatory during a person's state of unconsciousness unless consciousness has been regained during part of a prayer time in which case that prayer alone must be made up. Abu Hanifah holds the view that only five or fewer than five prayers must be made up if consciousness is lost during those times. However, if it is lost in more than five prayers, it is no longer obligatory to make them up. See al-Mughni, vol.I, p.290. Apparently, Ibn Hanbal's view in this case is that all the prayers missed during one's state of unconsciousness must be made up after it is regained.

134. Adhan literally means a making known, a notification or an announcement. Technically it is the notification or announcement of the prayer time. In other words it is the call to prayer using specific words of this call which is usually chanted from the turret (mi'dhanah) of the mosque. Lane. See section 2.2.

135. Abu 'Abd-Allah is the surname (kunyah) of Ibn Hanbal. See Laoust, Profession, p.65. The kunyah here is connected with the name: Abdallah, one of the sons of Ibn Hanbal who died in the year 290 A.H./903 A.D. See EI^2, under HANABILA.

136. Bilal bin Rabah al-Habashi was the caller to prayer (Mu'adhdhin) of the Messenger of Allah -may the blessings and peace of Allah be upon him. He was the mawla of Abu Bakr al-Siddiq. His kunyah was Abu 'Abd-Allah. Some say it was Abu 'Abd-al-Rahman. He was one of the earliest to accept Islam, about whom 'Umar said: "Abu Bakr is our leader and he emancipated also our leader". Bilal died in Damascus in the year 20 A.H. See 'Armush, Muwatta' pp.721-722. See also EI^2 under Bilal bin Rabah. It is interesting to note that

in the _adhan_ of Bilal there is no _tarji'_, i.e. to pronounce in a low voice the two witnesses (_shahadatayn_) two times each and then repeat them aloud, then followed by pronouncing aloud the remaining words of the _adhan_. However, Ibn Hanbal mentions that if _tarji'_ is pronounced the _adhan_ is still valid. According to Malik and al-Shafi'i and some Hijazi scholars, what is recommended according to the _Sunnah_ is the _adhan_ of Abu Mahdhurah, which is the same as the _adhan_ of Bilal except that there is _tarji'_ in the former. Malik, therefore, goes with the _adhan_ of Abu Mahdhurah except that he recommends the pronouncement of the initial _takbir_ only two times. See _al-Mughni_, vol.I, pp.293- 294.

137. _Iqamah_: This is the notification or the announcement to start the prayer. The formula as mentioned by al-Khiraqi is what is used for such a call to start the prayer according to the Hanbali school. al-Shafi'i holds the same view. Abu Hanifah holds the view that the _iqamah_ is pronounced with the same words as in the _adhan_. Hence Abu Hanifah admits the repetition of the _iqamah_. See _al-Mughni_, vol.I, p.294. See also Laoust, _Profession_, p.134. According to Malik, the _iqamah_ is pronounced the same as mentioned by al-Khiraqi except that the words "It is time for prayer" are pronounced once. See _M.W.S.K._, vol.I,p.398.

138. This expression is added after the second pronouncement of the words, "Come to success", and it is known as _al- Tathwib_, from the verb _Thawwab_ meaning to recompense or to reward or to pay for. See _al-Qamus al-Muthit_, also Cf _Qur'an_ _Surah_ 83:36. Hence, _al-Tathwib_ is the pronouncement of the above expression to prompt the believers to prayer for a better reward. See _Qur'an_:_Surah_ 28:80. The _Tathwib_ is recommended only for the _Fajr_ prayer but between the _adhan_ and the _iqamah_ with the words: "Come to prayer", two times. "Come to success", two times. _M.W.S.K._, vol.I, p.393.

139. This implies that it is only considered reprehensible if the _adhan_ is pronounced by a person in a state of minor impurity.

140. _Qiblah_: The direction towards which the person turns at prayer. This is the direction of the sacred House of Allah. (_Ka'bah_) in Makkah al-Mukarramah. See section 2.3. Note that the first _qiblah_ of the Muslims was Jerusalem. The Prophet was ordered to face the holy Rock in Jerusalem, and while in Makkah he prayed between the two corners of the ka'bah (_al-Rukn al- Yamani_ and _al-Rukn al-Aswad_) and standing before the _Ka'bah_ he faced the direction of the Rock of Jerusalem at prayer. However, after he migrated to Madinah it was not possible for him to face the

Ka'bah and the direction of the Rock at the same time, hence he was ordered to turn towards the direction of Jerusalem. The Prophet prayed in Madina for sixteen or seventeen months before finally instructed to turn towards the sacred sanctuary in Makkah (Ka'bah). See al-Sabuni Mukhtasar Ibn Kathir, vol.I, pp.134-141. See Qur'an:Surah 2:142-150; EI[2] under Kibla.

141. Mu'adhdhin: is one who notifies or proclaims by a chant the time of prayer. Ibn Qudamah points out that the adhan and iqamah have been instituted only for the five obligatory prayers and are pronounced by men only. See Laoust, Precis, p.18.

142. Some Hanbalis recommend that the words "La hawla wala quwwah illa billah" (there is no power and no strength save in Allah) be said in response to the statements "Come to prayer" or "Come to success" each time the mu'adhdhin pronounces them. According to Ibn Qudamah, this recommendation has been mentioned by Ibn Hanbal, al-Mughni, vol.I, p.309.

143. See Qur'an:Surah 2:239. Apparently this is the case when the believers are in the state of alert but not in a state of armed combat. However, if in a state of armed combat the prayer is performed walking or riding and turning towards the qiblah or any direction and making appropriate motions. See section 2.13.

144. Sujud: is the act of prostrating oneself in prayer by dropping gently upon the knees, placing the palms of the hands on the ground, a little before the place of the knees, and then putting the nose and forehead on the ground between the two hands. Lane.

145. Ruku': is the lowering of the head by a person praying after the act of standing so that the palms of the hands reach the knees, or in other words so that the back of the person becomes depressed. According to some scholars the head is lowered to the point that if a cup full of water is placed upon the back of a person at prayer it will not be spilled. Lane.

146. (D) Ibn Abi Ya'la confirms the authenticity of the report on which al-Khiraqi's view is based. Abu Bakr's view is that unless the person is being pursued he must perform the prayer as in a state of safety; and this is the majority opinion based on Allah's statement: "And if you go in fear then (pray) standing or on horseback. And when you are again in safety, remember Allah, as He has taught you that which (heretofore) you know not". Qur'an:Surah 2:239. The point here is that "fear" is stipulated in order for the prayer to be performed as in a state of alert, but in the case where the enemy is being

pursued the pursuer is regarded as in a state of safety. See Tabaqat, vol.II, p.79; see also al-Mughni, vol.I, p.314.

147. This is the report on which Abu Bakr's view is based. See note no.146. For the source of this report see Ibn Hanbal, Masa'il related by Ibn Hani, vol.I, p.110; see also Ibn Hanbal, Masa'il related by 'Abd-Allah, p.132.

148. Though al-Khiraqi mentions here riding camels, this case is also applicable on other riding animals and other means of conveyance. See al-Mughni, vol.I, pp.315-316.

149. See section 2.13 for full description of the performance of prayer in a state of alert.

150. Al-Khiraqi is hereby referring to those situations other than when the person is in a state of profound fear or when performing voluntary prayers while riding on something.

151. Ka'bah: is the sacred House in Makkah. cf Qur'an:Surah 5:97. It is the square or cubic building in the centre of the Grand Mosque in Makkah. It is said to be so called because of its square or cubic form or because of its height and its square form. Lane, EI[2] under Ka'ba.

152. This is the case of a person who could not find anyone to guide him towards the direction of the qiblah from the locality in which he is, in which case he must make his own efforts (ijtihad) to determine the direction of the qiblah.

153. The mujtahid here is the person who determines through ijtihad the direction of the qiblah to face at prayer when no other person is available to guide him towards it. This kind of ijtihad is quite different from the legal ijtihad which is the use of individual reasoning in a legal or theological question based on the inter- pretation and application of the four usul (foundations of Islamic jurisprudence). Hence, Ibn Qudamah defines the mujtahid of the qiblah as one who is acquainted with the signs of the qiblah though he may be ignorant of the Islamic law. He mentioned that the most reliable sign is the determination of its direction by the stars, quoting from the Qur'an:Surah 16:16 and Qur'an:Surah 6:97. He also mentioned other signs through which the direction of the qiblah could be determined such as the lunar phases and the mansions, the rising and setting of the sun, and the blowing of the winds, etc. al-Mughni, vol.I, pp.319-322.

154. Ibn Qudamah discusses this in his commentary of the Mukhtasar. See al-Mughni, vol.I, p.324. It should be noted that Ibn Qudamah holds the same view as al-Khiraqi with regard to two mujtahids disagreeing with

one another concerning the direction of the qiblah and also with regard to the blind and the ordinary person. See Laoust, Precis, p.22.

155. Mushrik: is a polytheist, that is, a believer in a duality or a plurality of gods; and in a wider sense a disbeliever or misbeliever in God. A person who attributes to God a co-partner (sharik) is also known as a mushrik. Lane Hence, Shirk is the act of ascribing a partner to the Almighty God Allah. There are two main divisions of shirk: major shirk (shirk akbar) and minor shirk (shirk asghar). Ibn Hanbal believes that shirk renders all of a person's good deed void and null, and he used to quote Qur'an:Surah 39:65 on that. He also holds the view that it is obligatory on the apostate (al-Murtadd) who returns to Islam to repeat the pilgrimage (hajj) if it had been performed prior to becoming apostate. Tabaqat, vol.II, p.265. Obviously a Muslim who commits shirk particularly a major shirk is considered apostate. For further information on shirk see EI[1] under shirk.

156. That is, 'Allah is the greatest'. The pronouncement of this formula at the beginning of the prayer is a basic element of the prayer (rukn). According to Malik and al-Shafi'i the prayer is not effective if omitted deliberately or out of forgetfulness. See al-Mughni, vol.I, p.334.

157. Ummah: represents the people of a particular religion, or a people to whom a Messenger is sent, believers and unbelievers. (see Qur'an:Surah 16:36). Also any people called after a Prophet are said to be his Ummah. Lane. Here it is used in the sense of the followers of Prophet Muhammad.

158. Takbir: is the pronouncement of the formula "Allahu Akbar" - Allah is the greatest. See note no.156.

159. (D) Three different reports have been related from Ibn Hanbal in connection with the raising of the hands. One report states that they are raised up to the shoulders. Malik and al-Shafi'i hold such a view. Another report states that they are only raised parallel to the ears. This view is held by Abu Bakr Ghulam al-Khallal and it is also according to the view of Abu Hanifah. Another report still conveys that they may be raised parallel to the ears or to the shoulders. This view is shared by both al-Khiraqi and Abu Hafs al-'Ukbari. Tabaqat vol.II, p.79; al-Mughni, vol.I, p.339.

160. Obviously this is al-Khiraqi's view. However reports related from Ibn Hanbal regarding where to place both hands are not consistent. One report from him states that they are both placed below the navel as mentioned by al-Khiraqi. Another report points out that they are both to be placed above the navel over

the chest. Another report still points out that the person may either place them below or above the navel. al-Mughni, vol.I, p.341.

161. The seeking of refuge in Allah from Satan is required at the beginning of Qur'anic recitation (see Qur'an:Surah 16:98). Hence in reciting the opening chapter of the Qur'an at prayer, the words of seeking refuge in Allah are pronounced inaudibly. Ibn Qudamah mentions that no differences of opinion are known to him regarding that. al-Mughni, vol.I, p.343.

162. That is, the Opening chapter of the Qur'an:Surah 1:1-7.

163. See note no.1.

164. See Qur'an:Surah 1:7.

165. Amin: is an expression that means: 'O Allah answer my prayer'. According to some scholars, it is one of the names of Allah. al-Mughni, vol.I, p.353, M.W.S.K., vol.I, p.529.

166. Surah: means eminence or excellence. It also means a mark or sign of glory or nobility. It also signifies any degree of a structure in relation to the Qur'an to signify a chapter thereof because each of the Qur'anic chapters "forms one degree, or step, distinct from another, or leading to another, or from the same word signifying "eminence" or as being likened to the wall of a city". Lane. See also Jeffery, Foreign, under Surah.

167. Ibn Qudamah explained this in his commentary. See al-Mughni, vol.I, p.354.

168. At an early age of Islam the two hands used to be placed together in between the knees after placing one hand over the other. This act was known as tatbiq (folding the hands) but was abrogated later on. al-Mughni, vol.I, p.359, M.W.S.K., vol.I, p.541.

169. Ma'mum: is the person being led at prayer by the prayer leader (imam) and who must follow the prayer leader throughout the prayer rite. According to what is related by al-Bukhari, the Prophet said: "The imam is assigned as an example for his followers". See Sahih al-Bukhari, vol.I, pp.372-373 or al-Bukhari, Kitab Salah, bab no.18; Muslim, Kitab Salah, hadith no.77; Abu Dawud, Kitab Salah, bab no.68; Ibn Hanbal, vol.II, p.230.

170. This is according to the most widely accepted opinion of Hanbali school. It is also the view held by Abu Hanifah and al-Shafi'i. However, another report from Ibn Hanbal conveys that the hands must touch the ground before the knees; and this is the view held by Malik. al-Mughni, vol.I, p.371.

171. The following is what is noted in Ibn Qudamah's version: "O my Lord forgive me, O my Lord forgive me". See al-Mughni, vol.I, p.377.

172. (D) According to Ibn Abi Ya'la, this view is based on the most authentic of two reports. It is also the view held by Abu Hanifah. According to the other report, the person may sit on his buttocks before getting up. This latter view is held by both Abu Bakr and his master al- Khallal. According to al-Khallal, Ibn Hanbal gave up the former view and held on to the latter view. See Tabaqat, vol.II, p.80; al-Mughni, vol.I, p.380.

173. Tashahhud: is the reciting of the form of words commencing with: "All salutations are due to Allah....", from the occurrence therein of the words: "Ashhad...wa ashhad..."(I bear witness that there is no god but Allah, and I bear witness that Muhammad is His Servant and Messenger). See section 2.4, also see note no.175.

174. Sajdah: signifies a single act of prostrating oneself in prayer or the like, as part of a rak'ah. See note no.144.

175. 'Abd-Allah bin Mas'ud: was a companion of the Prophet. He died in Madinah in the year 32 or 33 A.H. He was one of the first great muftis and Qur'an readers, and was sent to Kufah by 'Umar bin al-Khattab to teach Islam wherein he lived for a number of years and was later on considered a main authority for the Kufian Iraqian doctrine. See Laoust, Profession, p.22; Schacht, Origins, p.231. For further biographical and bibliographical information see EI^2, under Ibn Mas'ud. Malik holds the view that the tashahhud of 'Umar bin al-Khattab is the best, which is: "All salutations are due to Allah, all purity is Allah's, all benediction is from Allah...." and the rest is the same as in the tashahhud of Ibn Mas'ud. According to al-Shafi'i, the best tashahhud is that of Ibn Abbas from the Messenger of Allah who taught saying: "Blessed salutations are Allah's, and benediction and pleasures all come from Allah. May peace be upon us and upon the righteous servants of Allah. I bear witness that there is no god but Allah, and I bear witness that Muhammad is the Messenger of Allah". See al-Mughni, vol.I, p.384. However, Ibn Hanbal explains that whichever form of tashahhud is used is acceptable if it is authentically related from the Prophet -may the blessings and peace of Allah be upon him-, though the tashahhud of Ibn Mas'ud is preferable to Ibn Hanbal. ibid, vol.I, p.385.

176. Akhbar: is the plural form of Khabar which is used synonymously with hadith signifying a tradition or narrative related to a saying or an action and so on of the Prophet. In its broad sense, Khabar applies to what comes from the Prophet or from any other person.

Hadith: is a term applied specifically to what comes from a companion of the Prophet. Lane. Akhbar here means those narratives related to supplications from the Prophet or his Companions or the righteous predecessors (salaf). See al-ba'li, al-Mutli', p.84.

177. Taslim: is the pronouncement of the salutation of 'peace', i.e. "May the peace, mercy and blessing of Allah be upon you". It is pronounced audibly in Arabic after the final rak'ah of the prayer is completed.

178. Imam: this word has various connotations. It is used here to signify the leader in the prayer (Imam al-Salah) whose example is followed by each person (Ma'mum) praying with him. See note no.169.

179. al-Hamd: literally means "The Praise". It is the initial word in the Opening chapter of the Qur'an (al- Fatihah) following the basmalah. Hence, it is mentioned here to refer to the whole of the Opening chapter of the Qur'an. (see Qur'an:Surah 1:1-7).

180. Qur'an:Surah 7:204. This verse has only been included as part of Ibn Qudamah's commentary. See al-Mughni, vol.I, p.403.

181. Abu Hurayra: was a companion of the Prophet. When he herded his people's goats he kept a kitten to play with, hence the name Abu Hurayra. On his real name and his father's, about thirty different names have been mentioned. According to al-Nawawi (d.1277 C.E.) the most reliable of them is Abu al-Rahman bin Sakhr. He accepted Islam in the year of Khaybar 7 A.H. and died in the year 57 or 58 or 59. About him al-Shafi'i said: "Abu Hurayra transmitted more hadiths than others". He reported 5374 hadith. see 'Armush, Muwatta', p.720. EI^2 under Abu Hurayra.

182. This hadith is related by Malik. see 'Armush, Muwatta', p.68, or see Muwatta' Kitab Nida', hadith no.44; Ibn Hanbal, vol.2, p.240, al-Tirmidhi, Kitab Salah, bab no.116. This hadith also appears only in Ibn Qudamah's commentary. See al-Mughni, vol.I, p.403.

183. al-Fatihah: The Opening chapter (or source) of the Qur'an. See note no.179.

184. These are termed saktata 'l-Imam, such as a silence or pause after the commencement of the prayer; that is prior to the first recitation of the Opening chapter of the Qur'an, and also after the completion of the recitation of the Opening chapter of the Qur'an. Lane. M.W.S.K., vol.I, p.537.

185. That is, during all rak'ahs of zuhr and 'Asr prayers, and during the last rak'ah of maghrib prayer and the last two rak'ahs of 'Isha' prayer.

186. Tiwal: literally means long ones. It is used here to refer to one of the three divisions of the portion of

the Qur'an called mufassal, namely: tiwal (long), awsat (middle), and qisar (short). see al-Qattan, Mabahith, p.126.

187. Mufassal: is an appellation of one of the four portions of the Qur'an, namely: al-Tiwal, al-Mi'un, al-Mathani, and al-Mufassal. The tiwal consists of seven surahs, namely: surahs 2,3,4,5,6,7 and surahs 8 & 9 together or surah 10. al-Mi'un are surahs containing about one hundred verses or a little more. al-Mathani are the next surahs to al-Mi'un in terms of number of verses. al-Mufassal begin from surah 37 or 45 or 47 or 48 or 49 or 50 or 61 or 67 or 87 or 93 to the end. According to Lane, this portion is called mufassal because of its many divisions between its chapters or because of its few abrogations. see Lane; see also al-Qattan, Mabahith, p.126. According to a report attributed to Ibn Hanbal, the mufassal begins from surah 50 to the end. see al-Ba'li, al-Mutli', pp.74-75. Hence surah 50 could be considered, according to the Hanbali school, the beginning of the mufassal. Generally, the mufassal is divided into three parts (see above): 1) The tiwal of the mufassal begins from surah 49 or 50 to the end of surah 78 or 85. 2) The awsat of the mufassal begin from surah 78 or 85 to the end of surah 93 or 98. 3) The qisar of the mufassal begin from surah 93 or 98 to the end of the Qur'an. see al-Qattan mabahith, pp.126- 127.

188. Ayat: is the plural form of the Arabic word Ayah which signifies a sign, token or mark by which a person or thing is known. Hence a verse of the Qur'an being a collection of words or a connected form of words of the Qur'an continued to its breaking off. It is so called because it is a sign of the breaking off. Lane It should be noted that the Qur'anic verse (ayah) is not always a collection of words or a connected form of words continued to its breaking off, but it is sometimes made up of a single word (see Qur'an:Surah 101:1) or of two or more letters which are not necessarily words (see Qur'an:Surah 40:1, 2:1, 19:1). see also Jeffery, Foreign, under 'Ayah.

189. This is the initial verse of "the chapter of the Sun" (Surat al-Shams). Hence the initial verse is mentioned here to refer to this chapter as a whole. see Qur'an: Surah 91:1-15.

190. Umm al-Kitab: literally means the mother of the Book. It is used here to signify the Opening chapter of the Qur'an which is the original or essence of th

191. Obviously, it is conditional upon the person to also have some clothing over the shoulder. Such a condition must be fulfilled according to the Hanbali school in order that the prayer may be valid.

However, most jurists such as Malik, al-Shafi'i, and some others do not make that stipulation. al-Mughni, vol.I, p.415.

192. 'Awrah: is the part or parts of the person which are considered indecent and unlawful to expose. In a man what is between the navel and the knee is generally considered the 'awrah. This view is held by most jurists such as Abu Hanifah, Malik and al-Shafi'i. see Ibn Rushd (520-595 A.H.), Bidayah, vol.I, p.114. See also note no.192 for additional requirement of the 'awrah beside the area between the navel and the knee according to the Hanbali school. In a free woman, the 'awrah is all the person except the face and the hands as far as the wrists. In a female slave, what appears of her in service such as the head, the neck and the forearm are not included in the term 'awrah. Lane. For detailed information on the 'awrah of man and woman. See Ibn Taymiyya, Hijab, pp.1-59.

193. This view is also held by Abu Hanifah. Malik and al-Shafi'i hold the view that such a person must pray in a standing position and perform ruku' and prostrate. al- Mughni, vol.I, p.424.

194. It appears what is preferable to Ibn Hanbal is the performance of the prayer by the naked individual or congregation in a sitting position and performing sujud in the usual manner on the bare ground rather than making the prescribed motions. Ibn Hanbal attributed the recommendation of making the prescribed motions to some scholars other than himself. He said: "Some people say they should make the prescribed motions". see Ibn Hanbal, Masa'il..., related by 'Abd-Allah, p.63.

195. see Ibn Hanbal, masa'il..., related by Ibn Hani, vol.I, p.83.

196. see Ibn Hanbal, masa'il..., related by 'Abd-Allah, p.62. This view is held by a large number of scholars (Jumhur). According to al-Hasan al-Basri (d.110 A.H.): She must use a veil to cover the head if she ever gets married see Ibn Rushd, Bidayah, vol.I, p.116; al- Mughni, vol.I, pp.432-433.

197. Umm al-Walad: is a female slave who has borne a child to her owner. By law she becomes free on her owner's death. She cannot therefore be disposed of except by manumission or by mukatabah contract by which the slave acquires his or her freedom against a future payment, mostly by installment. Schacht, Introduction, p.129.

198. (D) See Ibn Hanbal, Masa'il..., related by 'Abd-Allah, pp.62-63. Obviously, al-Khiraqi treats the Umm al-Walad like a pure slave, except that she cannot be sold. Hence she is not required according to this

view, to cover the head. see section 59.1. This view is also held by Malik and al-Shafi'i. al-Khiraqi treats the umm al-Walad as such because it is lawful to use her in settlement of what is due on a person. On the contrary, Abu Bakr Ghulam al-Khallah treats the umm al-Walad like a free woman since freedom is already a positive fact with her, hence she must according to this view, cover the head. see Tabaqat, vol.II, p.80; al-Mughni, vol.I, p.434.

199. (D) Abu Hanifah also holds this view. The statement made by al-Khiraqi that "the current prayers be repeated if there is still some time left" implies that performance of the prayers in their usual order is only necessary if there is still some time left for the current prayer to be repeated after the previous prayer has been made up, otherwise the prescribed times for both prayers would be missed considering the shortness of the time. Hence, the understanding drawn here is that the repetition of the current prayer would not be necessary if there was no time left for its performance, and in this case both prayers would have been performed contrarily to their normal order. Both Abu Bakr and his master Al-Khallal hold the view that performance of the prayers in their normal order is, nevertheless, obligatory. This view is also held by Malik. Hence, according to this view repetition of the current prayer is still necessary after the previous prayer has been made up, because performance of the prayers according to their order would have been necessary if there had been sometime left, so should the case be even outside of the prayer-time limit. Tabaqat.., vol.II, pp.80-81. al-Mughni, vol.I, pp.435- 436.

200. Sujud of the Qur'an is also known as sujud of recitation (sujud al-Tilawah): this is a single act of prostrating oneself at certain verses of the Qur'an. see notes nos.202 and 203.

201. (D) The following are the fourteen different places in the Qur'an at which such a sujud may be carried out:1) Surah 7:206, 2) Surah 13:15, 3) Surah 16:50 4) Surah 17:109, 5) Surah 19:5, 6) Surah 22:18, 7) Surah 22:77, 8) Surah 25:73, 9) Surah 27:26, 10) Surah 32:15, 11) Surah 41:38, 12) Surah 53:62, 13) Surah 84:21, 14) Surah 96:19 See al-Mughni, vol.I, p.443. Obviously, al-Khiraqi's position is that there are only fourteen places in the Qur'an at which sujud of the Qur'an may be carried out as in above. This is the widely accepted opinion of the school. It is also the view held by al-Shafi'i. However, according to another report from Ibn Hanbal the sujud is carried out at fifteen places including

surah 38:24. This latter view is held by Abu Bakr. It is also held by Malik and Abu Hanifah. see Tabaqat.., vol.II, p.81. al-Mughni, vol.I, pp.441-442.

202. That is, Qur'an:Surah 22:18 and 77. al-Khiraqi; believes that surah 22 has two places as in above at which sujud of the Qur'an is carried out. This is also the view held by al-Shafi'i, Malik and Abu Hanifah believe that the latter verse, i.e. Qur'an:Surah 22:77 is not one of the places at which to carry out the sujud because the Almighty Allah combines in this verse between the performing of ruku' and sujud, and hence cannot be one of the places at which sujud of the Qur'an may be carried out, likewise in Qur'an:Surah 3:4 wherein Allah combines between the performing of ruku' and sujud. al-Mughni, vol.I, pp.442-443.

203. There are five different times, according to Ibn Qudamah, when the performance of voluntary prayer is forbidden, as in the following: 1) After the Fajr prayer until sunrise. 2) At the time of the rising of the sun until it rises up to the height of a lance. 3) When the sun reaches the zenith until it begins to decline. 4) After 'Asr prayer until sunset. 5) At the time of the setting of the sun until it completely disappears. see Laoust, Precis, p.33. see also section 2.8. According to another report from Ibn Hanbal, sujud of the Qur'an may be carried out at those times; and this is also the view held by al-Shafi'i. al-Mughni, vol.I, p.446.

204. Ibn Hanbal points out regarding the first situation that the person should rise to prayer if some dinner has been eaten, which implies that unless some dinner has already been eaten the prayer should be delayed. see al-Sijistani, Masa'il, p.38. According to Malik the prayer should first be performed unless it is a light meal in which case the prayer should be delayed. In the second situation Malik recommends repetition of the prayer if given trouble by the delaying of the call of nature, which implies that the prayer should be performed first in this situation also, and unless the person is given trouble by the delaying of the call of nature repetition of the prayer is not recommended. Abu Hanifah and al-Shafi'i consider the performance of the prayer while the person has the call of nature as reprehensible (makruh) but it is valid if performed in that situation. Ibn Rushd mentions that this is the view of most scholars. However, he points out that some scholars consider such a prayer invalid (fasidah) and requires repetition (i'adah). see Ibn Rushd, Bidayah, vol.I, pp.180-181. al-Mughni, vol.I, p.450.

205. _Takbirat al-Ihram_: literally means the pronouncement of _takbir_ in a state of ritual consecration. Technically, it refers to the opening _takbir_ pronounced at the start of the ritual prayer. The pronouncement of the _takbir_ is a basic element (_rukn_) of the prayer without which the prayer cannot be considered valid. see _M.W.S.K._, vol.I, p.505.

206. _Tasbih_: here means the pronouncement of the words: "Glorified is my Lord the Great" in the _ruku'_, and the words: "Glorified is my Lord the Most High" in the _sujud_. see section 2.4.

207. The expression "O my Lord, forgive me" has been mentioned only once in Ibn Qudamah's version of the _Mukhtasar_. see _al-Mughni_, vol.II, p.5.

208. (D) Al-Khiraqi holds the view that the invocation of Allah's blessings on the Prophet -may the blessings and peace of Allah be upon him- in the final _tashahhud_ is obligatory except if omitted out of neglect in which case two prostrations of neglect are required. Hence, the prayer is considered void if omitted deliberately. Ibn Hanbal has two other reports. The most authentic of which points out that the invocation of Allah's blessings on the Prophet is a basic element (rukn) of prayer and is still binding if omitted out of neglect. Abu Ya'la and Abu Hafs al-Ukbari hold this view. It is also the view held by al-Shafi'i. According to the other report, the invocation of Allah's blessings on the Prophet is _sunnah_. This latter view is held by Abu Bakr. It is also the view held by Abu Hanifah and Malik. see _Tabaqat_, vol.II, pp.81-82. _al-Mughni_, vol.II, pp.5.

209. Two prostrations of neglect (_sajdata 'l-Sahw_): These are two prostrations when certain acts in the prayer are omitted or performed out of neglect, and which are carried out at the end of the prayer before or after the _taslim_ is pronounced. Such acts are divided into three categories. 1) Performance of an additional act of the prayer. 2) Omission of an obligatory act (_Wajib_) 3) When in doubt or uncertain about if an act in the prayer has been performed. see Laoust, _Precis_, pp.28-30.

210. The original place of this statement marked here in parenthesis was according to the publisher of the _Mukhtasar_, at the end of the section on "Praying with Impurity", cf section 2.7. He only repeated it here because of its relevance to the topic. See al-Shawish _Mukhtasar_, p.29.

211. Imran bin Husayn: was one of the great companions of the Prophet; appointed as qadi of Basra wherein he died in the year 52 A.H. Laoust, _Precis_, p.3

212. That is the Prophet in a similar situation, completed the prayer and carried out two prostrations in the

same manner as described above. See _al-Mughni_, vol.II, p.12.

213. (D) According to Abu Bakr and Abu Ya'la and which is the majority opinion, the imam completes the prayer based upon certainty and then prostrates before _taslim_; and likewise the person praying by himself. This latter view is based on what is related by Ibn Hanbal through his chain of reporters from Abu Sa'id al-Khudri and from the Messenger of Allah -may the blessing and peace of Allah be upon him- who said: (A person who has any doubt in the prayer and who is not sure how many _rak'ah_s have been performed, must complete the prayer based upon certainty, and when the prayer has thus been completed, two prostrations must be carried out before pronouncing the _taslim_. If the _rak'ah_s of the prayer were an odd number then they would have been made even, and if they were even then the two prostrations would have served to abase or humble the devil). See _Tabaqat_, vol.II, p.82; _al-Mughni_, vol.II, pp.13-14.

214. See _al-Mughni_, vol.II, p.14.

215. Such as when the _taslim_ is pronounced before the completion of the prayer, or if the Imam in a congregational prayer has to apply his mind based on his own strongest belief.

216. It should be noted that al-Khiraqi distinguishes between the Imam and the individual praying by himself in a situation where it is not certain how many _rak'ah_s of the prayer have been performed. In the case of the Imam he must apply his mind to the problem based on his own strongest belief (_bana 'ala akthar wahmih_) then carry out two prostrations after _taslim_; but in the case of the individual praying by himself, the prayer must be completed based on the number of _rak'ah_s the person is certain of having performed (_bana 'ala 'l- yaqin_), then carry out two prostrations of neglect before _taslim_. Ibn Qudamah mentions that according to another report the individual praying by himself may apply his mind to the problem based on his own strongest belief; nevertheless he points out that the most correct opinion of the school is what is mentioned by al-Khiraqi. He added that if the Imam completes the prayer based on what he is certain of having performed then two prostrations must be carried out before _taslim_ such as in the case of an individual praying by himself; and if the individual praying alone applies his mind to the problem and according to his own strongest belief, based on the other report, then two prostrations must be carried out after _taslim_. _al- Mughni_, vol.II, p.219.

217. see _al-Mughni_, vol.II, pp.26-27.

218. In response to a question concerning a person who forgets to prostrate in a rak'ah of a prayer, Ibn Hanbal explains that only that rak'ah may be performed again followed by two prostrations of neglect provided the person has not spoken after the prayer was over since it was remembered. see Ibn Hanbal, masa'il, related by Ibn Hani', vol.I, pp.76-77. see also Ibn Hanbal, masa'il, related by 'Abd-Allah, pp.85-86. Also see Laoust, Precis, p.29.

219. Responding to another question concerning a person who forgets to prostrate in a rak'ah of a prayer, Ibn Hanbal explains that a rak'ah is valid only if ruku' and two prostrations have been performed. The prayer, in such a case, must be performed again. see Ibn Hanbal, masa'il, related by Ibn Hani, vol.I, p.78.

220. (D) Ibn Abi Ya'la explains that it is so because the Imam might need to talk when an act is omitted out of neglect (sahw) and could only find out what is correct by asking. Two reports other than that which al- Khiraqi's view is based on are also reported from Ibn Hanbal, the most authentic of them indicates that the prayer is void if the Imam says anything and this view is the majority opinion. According to the other report, it is permissible for both Imam and ma'mum to speak in the interest of the prayer, such as if the Imam is reminded of something neglected in the prayer; and this view is held by Malik. see Tabaqat, vol.II, p.82.

221. According to one report from Ibn Hanbal, it is not permissible to perform prayers at these places. Another report from Ibn Hanbal indicates that it is acceptable to perform prayer at these places so long as they are clean. This latter view is in accordance with the school of Malik, Abu Hanifah and al-Shafi'i. see al- Mughni, vol.II, p.51.

222. According to what is related by Ibn Hanbal from the Messenger of Allah -may the blessings and peace of Allah be upon him- "the urine of a male child is splattered with water and the urine of a female child should be washed". al-Mughni, vol.II, p.68. see also al-Sijistani, Masa'il, p.21.

223. (D) This view is preferable to Abu Ya'la. It is also the view held by al-Shafi'i, based on what is related by Ibn Abbas who said, "The Prophet -may the blessings and peace of Allah be upon him- was asked concerning semen when it touches a piece of cloth, and he said: "It is treated like nasal mucus or saliva, and it may be cleaned out with a piece of cloth or with idhkharah", i.e. a kind of sweet rush in form, resembling papyrus-plant, or of pungent odour, which becomes white when it dries (see Lane). According to Ibn Abi Ya'la, al-Khiraqi mentions

another report which indicates that semen is treated like blood (see note no.224). Abu Bakr holds that semen must be washed out if wet, and rubbed if dry; otherwise the prayer must be performed again. This latter view is based on what is related by 'Aishah - may Allah be pleased with her- who said: (The Messenger of Allah -may Allah's blessings and peace be upon him- instructed me to wash out the semen on the cloth if it is wet, and rub it out if it is dry). This latter view is held also by Abu Hanifah. Malik holds the view that the semen must be washed in any case. See Tabaqat, vol.II, p.82.

224. Excessive blood in one's piece of cloth requires the repetition of one's wudu' and prayer if the prayer is performed in that condition. Similarly, excessive semen on one's piece of cloth requires repetition of the prayer. Hence semen is treated like blood. See Ibn Hanbal, Masa'il - related by Ibn Hani, vol.I, pp.7, 58. see also Ibn Hanbal, Mans'il-related by 'Abd-Allah, pp.64-65.

225. This view of al-Khiraqi is also held by Malik and al-Shafi'i. Abu Hanifah holds a different view, that is, the Imam and his followers must all perform the prayer again. See al-Mughni, vol.II, p.73.

226. These two rak'ahs are offered behind Maqam Ibrahim after the Ka'bah has been circumambulated seven times. According to al-Khiraqi, it is permissible to offer such a two rak'ah-prayer even at times forbidden to perform prayers. This is also in accordance with the school of al-Shafi'i. Malik and Abu Hanifah disapprove of performing such a prayer at those times. al-Mughni, vol.II, p.81.

227. See note no.204.

228. It is preferable to Abu Hanifah to offer four straight rak'ahs for voluntary prayer at night or day. Abu Ya'la, Sharh, p.1b (2770).

229. Witr: a prayer in the night, after 'isha', consisting of an odd number of rak'ahs. Lane. Apparently, the performance of one rak'ah for witr is preferable to Ibn Hanbal. Nevertheless he mentions that it is acceptable to perform three or more rak'ahs for witr. al-Mughni, vol.II, p.111.

230. Qunut: signifies the act of standing during the performance of the witr prayer, hence the appelation qunut al-Witr (the standing of the Witr) during which the supplication of the standing (Du'a 'l-Qunut) is pronounced. Lane For the supplications of the standing (qunut) see al-Mughni, vol.II, pp.112-113.

231. This is also according to the school of al-Shafi'i and Malik. Abu Hanifah hold the view that it should not be separated from the previous rak'ahs of the voluntary prayer through the pronouncement of the

taslim. see al- Mughni, vol.II, pp.115-116. According to Abu Ya'la, the witr is separated from the previous rak'ahs of three rak'ahs are being offered. However, if more than three rak'ahs are being offered such as five rak'ahs or seven or nine or eleven it is permissible to join the witr with the previous rak'ahs with the pronouncement of one taslim at the end of the prayer. Abu Ya'la, Sharh, pp. 2a-2b (2770).

232. Ibn Qudamah mentions that the performance of twenty rak'ahs is most preferable to Ibn Hanbal. Abu Hanifah and al-Shafi'i hold the same view. It is also in accordance with one of the two opinions of Malik. According to the other opinion of Malik, it is recommended to perform thirty-six rak'ahs, and then three rak'ahs for witr prayer. See al-Mughni, vol.II, p.123. See also Ibn Rushd, Bidayah, vol.I, p.210. However, according to the practice of the Messenger of Allah, in accordance to what is related in Sahih al- Bukhari and Sahih Muslim, this night prayer consists of eleven rak'ahs. It is related by Malik in the Muwatta' that Umar bin al-Khattab advised that the prayer be performed eleven rak'ahs. Nevertheless, Malik also related that people used to perform in Ramadan twenty- three rak'ahs for the night prayer (tarawih) during the time of Umar bin al-Khattab. see al-Albani, Qiyam Ramadan, p.4 and pp.15-16. see also 'Armush, Muwatta', p.85. Hence, scholars have differed in their opinion in regard to the number of rak'ahs recommended for the night prayer of Ramadan along with the witr prayer. Some scholars say: 41 rak'ahs, others say: 39 or 29 or 23 or 19 or 13 or 11 etc. see Ibn Uthaymin, Majalis, p.19. Abu Ya'la mentions based on a report related from Ibn Abbas that the night voluntary prayer of the month of Ramadan (tarawih) consists of twenty rak'ahs but points out that this report is a weak report. see Abu Ya'la, Sharh, p.3b (2770).

233. Fiqh: signifies the science of the Islamic law, and more particularly the science of the derivative institutes of the law (furu'). Lane Note that al-Shafi'i prefers a person versed in the law (faqih) over one versed in the recitation of the Qur'an (qari') in terms of who leads the prayer. Abu Ya'la, Sharh, p.3b (2770) Ibn Qudamah presents in his commentary a different and a more detailed order of the best person to lead the prayer starting with <the best in the recitation of the Qur'an, then the most learned in the fiqh, then the earliest in terms of the hijrah, then the oldest of them, then the most honorable among them, then the most pious of them, and if they are equal in respect to all of the above,

then lots are cast to determine who leads the prayer>. al-Mughni, vol.II, pp.135-136.

234. Hijrah: the emigration of Muhammad in the year 622 A.H. from Makkah to Yathrib which later was called al- Madinah. For the history of the hijrah, see E1^{2} under Hidjra, Guillaume, The Life of Muhammad, pp.221-231. For detailed information on the era of the hijrah see Lane under hijrah. Note also that the Hijrah or the era of the Hijrah was instituted 17 years later by the Khalifah 'Umar bin al-Khattab which dates from the first day of the lunar month of the year, namely Muharram. see Hughes, A Dictionary of Islam, under Hijrah.

235. bid'ah: particularly applied to an innovation in religion after the completion thereof. Lane. A belief or practice for which there is no precedent in the time of the Prophet. It is the opposite of sunnah. For more information see E1^{2} under Bid'a. al-Shafi'i and Abu Hanifah hold the view that it is permissible to pray behind a person who advocates bid'ah as long as the person has not practiced or uttered disbelief (kufr). Abu Ya'la, Sharh, p.4b (2770).

236. It is reprehensible for the Imam to stand any level above the ma'mum, according to the most widely known opinion (mashhur) of the school. Obviously this is al- Khiraqi's view. It is also the view held by Malik and the rationalists (Ashab al-ra'y). However, there is another report from Ibn Hanbal which indicates that this is not reprehensible. al-Shafi'i prefers that the Imam teaching others stands on an elevated object to allow those behind him to watch and follow him. see al- Mughni, vol.II, p.154. see also Abu Ya'la, Sharh, p.7b (2770). According to al-Shafi'i, if the distance between the Imam and the ma'mum is three hundred dhira' (cubit measure) or less, then it is permissible for the ma'mum to follow the Imam in prayer even if the rows do not stay in contact with one another. Abu Ya'la, Sharh, p.7a (2770).

237. In both cases, Malik, al-Shafi'i and the rationalists hold the view that the prayer is acceptable. al-Mughni, vol.II, pp.155-156.

238. Abu Bakrah: was a companion of the Prophet. He was originally an Abyssinian and a slave of the Thaqafites of al-Ta'if. His actual name was Nufay'bin Masruh, but later on designated as Abu Bakrah (the man of the pulley) because during the siege of the town of al- Ta'if by Muhammad he joined the Muslims by letting himself down by a pulley and was emancipated by the Prophet. His descendants forged themselves an Arab genealogy claiming that Abu Bakrah was the son of al- Harith bin Kaladah, "the physician of the Arabs". Abu Bakrah died in Basrah in 51 or 52

A.H. (671-2). <u>EI</u>[2] under Abu Bakra. It is not exactly known in which year he died. According to another source he died in 50 A.H. See Ibn Hanbal, <u>Masa'il</u> - related by Ibn Hani, vol

239. <u>Abu Talib</u>: He was Abu Talib al-Miskani, one of the transmitters of <u>fiqh</u> from Ibn Hanbal. See <u>Tabaqat</u>, vol.I, p.7.

240. <u>Sutrah</u>: is a thing that a person praying sets up before him sticking it in the ground or laying it down so that no living being or image may be the object next before him. <u>Lane</u>.

241. This is the most widely known opinion of Ibn Hanbal. According to another report from Ibn Hanbal, a black dog, or a woman, or a donkey may invalidate the prayer if they each walk past in front of the worshipper. Malik, al-Shafi'i and the rationalists (<u>Ashab al-ra'y</u>) hold the view that nothing as such invalidates the prayer. <u>al-Mughni</u>, vol.II, pp.183-184.

242. A parasang is equivalent to three <u>Hashimi</u> miles (<u>amyal Hashimiyyah</u>) i.e. three miles of the <u>Hashimi</u> measure. Hence sixteen parasangs are equivalent to forty-eight miles. <u>al-Mughni</u>, vol.II, p.188. According to the <u>Bani Umayyah</u> measure, a parasang is equivalent to two and half miles, hence sixteen parasangs according to this measure is forty miles. See al-Bahuti, <u>Kashshaf</u>, vol.I, p.504. The twenty-fifth part of a complete parasang is called <u>Ghalwah</u> which is the utmost measure of a bow- shot, i.e. a shot of an arrow to the utmost possible distance. Hence three miles of the <u>Hashimi</u> measure is twenty-five bow-shots. <u>Lane</u>. Abu Hanifah holds the view that only a travelling distance of three days may allow a person to break the fast or to shorten the prayer. He also holds the view that the prayer may be shortened even if the journey is for an unlawful purpose (<u>safar al-M'asiyah</u>). see Abu Ya'la, <u>Sharh</u>, pp.11a-11b (2770).

243. <u>Hashimi</u> mile: is equivalent to twelve thousand feet, which amount to six thousand <u>dhira'</u>. A <u>dhira'</u> is originally the part of the arm from the elbow to the tip of the middle finger, then the measure of the cubit. It is equivalent to twenty four digits each digit being the measure of six barley-corns each placed with its belly next to another. al-Bahuti, <u>Kashshaf</u>, vol.I, p.504; <u>EI</u>[2] under <u>dhira'</u>.

244. (D) This is also the view held by al-Shafi'i. Hence, if intention to shorten the prayer was not formed prior to starting the prayer, the prayer can not be shortened later on. Abu Bakr holds the view that it is acceptable to shorten the prayer without the intention formed prior to starting the prayer. see

Tabaqat, vol.II, p.83, al-Mughni, vol.II, p.196.

245. This is according to the most widely known opinion of Ibn Hanbal. It is also the view held by al-Shafi'i, and according to the most widely known opinion of Malik. Ibn Qudamah also mentions that another report from Ibn Hanbal conveys that Ibn Hanbal is undecided in this matter. Abu Hanifah holds the view that the prayer may not be completed when a person is travelling. al- Mughni, vol.II, p.197. However, Abu Hanifah makes an exception that the prayer may only be completed if the person is praying congregationally behind the non- traveller. see Abu Ya'la, Sharh, p.12a (2770). According to al-Shafi'i it is best to complete the prayer in the state of travelling. ibid, p.12b (2770).

246. This is according to the most widely known opinion of Ibn Hanbal. Ibn Qudamah mentions another report from Ibn Hanbal which states that if the traveller intends to stay for four days then the prayers are completed as if a non-traveller, but if less than that is intended, the prayers are shortened. This latter view is also held by Malik and al-Shafi'i. According to the school of Abu Hanifah, if the traveller intends to stay for fifteen days the prayers are completed as if a non- traveller, but if less than fifteen days is intended then the prayers are shortened. See al-Mughni, vol.II, p.212. Abu Ya'la, Sharh, pp.14a-14b (2770). Hence differences of opinion exist among scholars on how long must the traveller intend to stay in a town in order to shorten the prayers. Ibn Rushd mentions that there are about eleven different views on this case. However, scholars are in agreement that if a definite number of days was not determined such as if the traveller intends to stay only a part of a day or two then leave, and then ends up staying many days longer due to an unforeseen delay, the prayers are shortened all of these days. Ibn Rushd, Bidayah, vol.I, pp.169-170.

247. Jumu'ah: signifies a state of congregation. Hence the day of the congregation (yawm al-Jumu'ah) i.e. Friday; formerly called the day of al-'Arubah. Quraysh used to congregate on the day of al-'Arubah in the building called Dar al-Nadwah. Lane. It is called the day of the congregation because of the congregating of the Muslims on this day to perform the prayer called Jumu'ah prayer (Salat al-Jumu'ah). Cf surah 62:9.

248. This indicates that it is acceptable for more than one mu'adhdhin to pronounce the call to prayer (adhan) particularly for the Friday congregational prayer. Also, it should be noted that Abu Hanifah and Malik hold the view that the Imam does not greet the

congregation. See Abu Ya'la, Sharh, p.16a (2770).

249. This is in reference to the call pronounced right after the imam has taken his seat on mounting on the pulpit.

250. see Surah 62:9.

251. Ibn Qudamah only explains this in his commentary of the Mukhtasar, al-Mughni, vol.II, p.230.

252. This indicates that the person, in such a case, has not achieved the Jumu'ah prayer according to the Hanbali school. Hence, if this person were to join behind the Imam having the intention of performing Zuhr prayer in the event that less than a complete rak'ah is attained then four rak'ahs could be completed after that as Zuhr prayer. This implies that if such an intention was not primarily formed, then the person must initiate the four rak'ah-zuhr prayer after the Imam's pronouncement of taslim. According to Abu Hanifah, a person has achieved Jumu'ah prayer if any part of the prayer behind the Imam is attained, because if a prayer must be completed on attaining one rak'ah behind the Imam then it must be completed as well if less than a rak'ah is attained. see al-Mughni, vol.II, p.232.

253. This is also the view held by Abu Yusuf and al-Shaybani (the two disciples of Abu Hanifah). Abu Hanifah holds the view that if by the time of 'Asr the Jumu'ah prayer has not been completed, the prayer is invalid and may no longer be completed as zuhr prayer. al-Shafi'i holds the view that the prayer may then be completed as zuhr prayer. al-Mughni, vol.II, p.236.

254. This is also the view held by al-Shafi'i. Malik and Abu Hanifah consider the offering of these two rak'ahs at this time only as reprehensible. al-Mughni, vol.II, p.236.

255. According to the most widely known opinion of the Hanbali school, forty men are required for the performance of Jumu'ah prayer. Malik and al-Shafi'i also hold the same view. Ibn Qudamah mentions two other reports from Ibn Hanbal, one of which points out that fifty men are required, and the other conveys that three men may fulfil the obligation. According to Abu Hanifah, the obligation may be fulfilled by four men. Another view still indicates that the minimum requirement for the fulfillment of this obligation is twelve men. al-Mughni, vol.II, pp.243-244.

256. al-Jami': signifies the mosque in which the congregational prayers of Friday are performed; because such a mosque collects the people for a certain time. It is also called al-Masjid al-Jami' (the congregational mosque). Lane.

257. Abu Hanifah, Malik and al-Shafi'i hold the view that it is unacceptable to perform Jumu'ah prayer at more than one place in one town. al-Mughni, vol.II, p.248.

258. (D) Two different reports have been related from Ibn Hanbal regarding whether or not it is obligatory on the slave to attend Jumu'ah prayer. According to one of the two reports, it is not obligatory on the slave. Apparently this view is held by al-Khiraqi. The other report conveys that it is obligatory on the slave to attend the prayer, except that he cannot attend it without his owner's permission. This latter view is held by Abu Bakr. see al-Mughni, vol.II, pp.250-251.

259. This has been quoted as part of the commentary. see al-Mughni, vol.II, p.250. Abu Ya'la, Sharh, p.20a (2770)

260. (D) This is also the view held by al-Shafi'i. According to this view it is acceptable for the person not obligated to attend Jumu'ah prayer, to perform zuhr prayer, because such a person is not held accountable for not attending Jumu'ah prayer, and hence can not be obligated to delay the prayer until the Imam has finished the Jumu'ah prayer. Abu Bakr holds the view that the traveller or the sick or any person on whom Jumu'ah prayer is or is not obligatory may not perform zuhr prayer until the Imam has finished leading the Jumu'ah prayer. If performed otherwise, the person must perform the zuhr prayer again after the Jumu'ah prayer is over. This latter view is based on the fact that if a person on whom Jumu'ah prayer is not obligatory does attend it, it will be accepted from him or her in lieu of the zuhr obligation, hence the person may not perform the zuhr prayer before the Jumu'ah prayer is over. Tabaqat, vol.II, pp.83-84.

261. i.e. perform a ritual bath. See section 1.8. Ibn Qudamah mentions that there is another report related from Ibn Hanbal that performing such a bath is obligatory, al-Mughni, vol.II, p.256.

262. That the time for Jumu'ah prayer may start at the sixth hour before the sun begins to decline in the sky is obviously the view held by al-Khiraqi. Other Hanbali scholars hold the view that it could start at the time of the 'Id prayer. According to Abu Ya'la, there is a report from Ibn Hanbal that the prayer could be performed at the time prescribed for 'Id prayer. However, most scholars hold the view that the time for Jumu'ah prayer is the same as the time for zuhr prayer. Malik agrees that the Friday sermon (khutbah) may start before noon but not the prayer. See al- San'ani (d.1182 A.H.), Subul al-Salam, vol.II, p.456. Abu Ya'la, p.21a (2770).

263. This case pertains to people living outside of a big city of a distance of one parasang or less from the Jami' mosque. This view is also held by Malik. According to al-Shafi'i Jumu'ah prayer in this case is obligatory on a person who can hear the call regardless of the distance between him and the Jami'. The rationalists believe that Jumu'ah prayer is not obligatory on people who live outside of big cities. As for people who live in big cities whether close to the Jami' or far from it, and whether the call to prayer can be heard or cannot be heard from where they live, they are obligated to attend Jumu'ah prayer. This is according to the view of Ibn Hanbal, al-Shafi'i and the rationalists. See al-Mughni, vol.II, pp.266-267. Ibn Rushd, Bidayah, vol.I, p.165.

264. 'Id: A feast day, particularly an anniversary festival. It is so called because it returns every year with renewed joy. Muslims have two principal religious festivals, namely: the festival of sacrifice ('Id al- Adha), and the festival of the breaking of the fast after Ramadan ('Id al-Fitr). Lane.

265. 'Id al-Fitr: see note no.264.

266. Surah 2:185.

267. Ramadan: The ninth of the Arabian months. It signifies a month of vehement heat, and it is so called because when the names of the months were changed from the ancient language, they were named according to the seasons in which they fell, and natiq, for this was its ancient name, agreed with the days of vehement heat, hence the name Ramadan as the name of the month. Lane. See also al-Fayruzabadi, al-Qamus, under al-ramad.

268. Ibn Hanbal recommends that Surah 87 be recited in the first rak'ah and surah 88 in the second rak'ah. al-Shafi'i recommends surah 50 for the first rak'ah and surah 54 for the second rak'ah. According to Abu Hanifah, no particular surah is prescribed for the 'Id prayer. al-Mughni, vol.II, p.281.

269. This view is also held by Abu Hanifah and al-Shafi'i. Malik holds the view that the hands are raised only in the opening takbir. al-Mughni, vol.II, p.283. Abu Hanifah holds the view that three takbirs excluding the opening takbir are pronounced in the first rak'ah, and three takbirs in the second rak'ah. al-Shafi'i's view is that seven takbirs which exclude the opening takbir are pronounced in the first rak'ah, and five takbirs in the second rak'ah. Abu Ya'la, Sharh, pp.23b-24a (2770)

270. Sadaqah: signifies a gift to the poor for the sake of the Almighty God or to obtain a recompense from the Almighty God. It is applied in two ways: applied to

such as is supererogatory, and to such as is obligatory, i.e. to the zakah which is the poor rate given according to a fixed rate. The plural is Sadaqat. Lane. See Qur'an:Surah 9:60. Apparently Sadaqat al-Fitr or zakat al-Fitr is what is meant here.

271. 'Id al-Adha: Feast of sacrifice. See note no.264.

272. According to Abu Hanifah, voluntary prayer is not offered before the 'Id prayer but may be offered after the 'Id prayer. According to al-Shafi'i it may be offered before and after the 'Id prayer except that the Imam cannot offer it before the prayer. See Abu Ya'la, Sharh, p.25a (2770).

273. (D) This view obviously is based on a report from Ibn Hanbal. According to another report, two rak'ahs such as prayed by the Imam may be offered. This view is held by Abu Bakr based on the practice of Anas bin Malik in Basrah whenever he missed the 'Id prayer. According to a third report from Ibn Hanbal, the person has the option to either offer four rak'ahs or two rak'ahs if the 'Id prayer is missed. Tabaqat, vol.II, p.84.

274. This statement thus conveys that the taslim in such a case is pronounced only at the end of the four rak'ahs. See Tabaqat, vol.II, p.84.

275. It is also reported from Ibn Hanbal that such a person if so desires, may offer two rak'ahs in the same manner as the 'Id prayer with the pronunciation of the takbir. This is also the view held by Malik and al- Shafi'i, based on the practice of Anas bin Malik in Basrah. al-Mughni, vol.II, p.290.

276. 'Arafah: is the ninth day of the month of Dhu 'l-Hijjah when the pilgrims stay for a while at 'Arafat, a plain about 13 miles east of Makkah on the way to Ta'if and wherein they devote themselves to religious services and prayer. The origin of the name 'Arafah is not exactly known. According to an explanation, Adam and Eve, separated after their expulsion from Paradise, met again at this place wherein they recognized each other (ta'arafa). Other etymological explanations have been given on the origin of this name. See Lane. see also El^2 under 'Arafa.

277. Apparently what is most preferable to Ibn Hanbal is to pronounce the takbir after performing congregational prayers. See Ibn Hanbal, Masa'il - related by 'Abd-Allah, p.129. According to another report from Ibn Hanbal, which indicates that the takbir can be pronounced by oneself alone, "Ali used to pronounce it from the early morning of the day of 'Arafah until 'Asr prayer on the last day of the days of tashriq". ibid p.129; see al-Mughni, vol.II, p.294.

278. Tashriq: signifies the three days following the 10th of Dhu 'l-Hijjah being the day of sacrifice, i.e. the 11th, 12th and 13th of Dhu 'l-Hijjah. Ayyam al-tashriq (days of tashriq). According to one explanation, these days were so called because the flesh of the animal victims was cut into strips, in these days, and dried in the sun or spread in the sun to dry. According to another explanation, they were so called because the victims were not sacrificed until the sun rose. Another explanation still points out that they were so called from the prayer of the day of sacrifice which these days follow. Note here the appelation of the prayer of the day of sacrifice as al-Tashriq, see al-Mughni, vol.II, p.291. It has also been explained that these days were so called because, in addressing Thabir, one of the mountains of Makkah, the following used to be said in pre-Islamic time: "Ashriq Thabir Kayma nughir", i.e. Enter thou Thabir, upon the time of sunrise, that we may push, or press on, or forward. The people used to say this on the day of sacrifice to return from Mina. Abu Hanifah used to hold that al-Tashriq means al-Takbir i.e. the pronouncement of the formula: Allahu Akbar. See Lane; see also Laoust, Precis, p.43. There are differences of opinion among the four major legal schools regarding the beginning and the ending of the pronouncement of the takbir. According to the Hanbali school the takbir is pronounced beginning from the Fajr prayer on the day of ʿArafah until ʿAsr prayer is performed on the last day of the days of Tashriq. This is also according to one opinion of al-Shafiʿi. According to Abu Hanifah the pronouncement of the takbir begins from the early morning of the day of ʿArafah until ʿAsr prayer on the day of sacrifice. Malik holds the view that the takbir begins from zuhr prayer on the day of sacrifice until Fajr prayer on the last day of the days of tashriq. This latter view is also according to the most widely known opinion of al- Shafiʿi. al-Mughni, vol.II, pp.291-292. According to the most widely known opinion of Ibn Hanbal the takbir is pronounced at the end of every obligatory prayer performed congregationally. This is also the view held by Abu Hanifah. Malik holds the view that the takbir is pronounced at the end of every obligatory prayer whether performed congregationally or individually. This is also in accordance with another report from Ibn Hanbal. al-Shafiʿi holds the view that the takbir is pronounced at the end of every prayer whether obligatory or voluntary, and whether performed congregationally or individually. al-Mughni, vol.II, pp.293-294.

279. See Qur'an:Surah 4:101-102. See also Qur'an:Surah

33:19.

280. This conveys that prayer in a state of alert and in a non-traveling state is acceptable. This is also the view held by al-Shafi'i. Ibn Qudamah mentions that according to a report from Malik the prayer in a state of alert is not acceptable in a non-traveling state. al-Mughni, vol.II, p.302.

281. This is when it is other than Fajr or Maghrib prayer. For Fajr and Maghrib prayers each of the two groups could only be equally led in prayer with one rak'ah. In the case of Maghrib prayer specifically, each group then completes for itself two rak'ahs.

282. This view is also held by Malik. It is also in accordance with one of the two opinions of al-Shafi'i. According to the other opinion of al-Shafi'i, the Imam prays with the first group one rak'ah, and prays with the second group two rak'ahs. al-Mughni, vol.II, p.305.

283. This is the view of most scholars. Abu Hanifah holds the view that in such a case of severe danger and in a state of armed combat, it is not acceptable to pray. al-Shafi'i holds the view that it is acceptable provided the person is not in continuous pursuit or subjected to a long and continuous activity. al-Mughni, vol.II, p.309.

284. According to what is related from al-Shafi'i, when safety is reinstated while the prayer was being performed riding and in the state of alert, the person dismounts and completes the prayer as in a state of safety. However, if the prayer is started in a state of safety and suddenly the situation changes into a state of alert and a ride is mounted on, the prayer is performed again. al-Mughni, vol.II, p.311.

285. Ibn Qudamah explains this in the commentary and added that in such a case the words: "al-Salah Jami'ah" (prayer unites) are pronounced to draw the people's attention to the prayer. see al-Mughni, vol.II, pp.312-313.

286. See section 2.8; also note that according to another report related from Ibn Hanbal eclipse prayer may be performed at the forbidden times of prayer. It is also the view held by al-Shafi'i. Malik and Abu Hanifah hold the view that it may not be performed at those times, instead tasbih may be pronounced in place of the prayer. al-Mughni, vol.II, pp.317-318. Abu Ya'la, Sharh, p.29b (2770); see also note no.287.

287. This is the act of pronouncing the words of glorification such as by saying: "Glorified is Allah" (Subhan-Allah). see note no.206.

288. Related by al-Tirmidhi. see al-Mughni, vol.II, p.319, or see al-Tirmidhi, Kitab Jumu'ah, bab no.43, Abu Dawud, Kitab Istisqa, bab no.1; Ibn Hanbal, vol.I,

p.230; al-Nasa'i, Kitab Istisqa', bab no.3.

289. The pronunciation of adhan or iqamah is not recommended. Also, note that Abu Hanifah holds the view that prayer for rain or to go out for the rain prayer is not recommended. See al-Mughni, vol.II, p.320. Ibn Rushd, Bidayah, vol.I, p.215.

290. Different opinions have been mentioned regarding when to deliver the sermon for this prayer. According to the most widely known opinion, the sermon is delivered after the prayer, as pointed out by al-Khiraqi. Malik and al-Shafi'i also hold this view. According to another view the sermon is delivered before the prayer. This latter opinion is based on a report related by Bukhari, and Muslim. See al-Mughni, vol.II, p.321. This may indicate that it is permissible to deliver the sermon before or after the prayer. Hence according to a third opinion the delivering of the sermon is optional before or after the prayer. However, according to another opinion still, the delivering of the sermon is not required instead supplications are pronounced. al- Mughni, vol.II, p.321. Ibn Qudamah mentions that it is recommended for the Imam to deliver the sermon facing the qiblah and also to turn the sides of the cloak facing the qiblah, and that the followers also turn the sides of their cloaks facing the same direction. ibid, p.322.

291. see Qur'an:Surah 71:10-11.

292. Dhimmi: A non-Muslim and a member of other revealed religions who lives under the hospitality and protection of the Muslim community to which the dhimmi pays the poll-tax (Jizyah). For detailed information on the dhimmi and Jizyah, see EI^2 under dhimma and Djizya.

293. Obviously al-Khiraqi is not absolutely certain or decisive on the finality of his legal opinion pertaining to the dhimmis participating with the Muslims in praying for rain, hence he attributes complete knowledge of this case to Allah. Abu Ya'la points out that the dhimmis must be isolated from the Muslims because they are people of the torment and safety is not guaranteed when torment is sent down on them. He added that this is why they cannot be buried in the Muslims' grave yard. Abu Ya'la, Sharh, p.31b (2770).

294. Apparently, this is according to the school of Ibn Hanbal. Malik and al-Shafi'i hold the view that if the prayer is omitted out of neglect or laziness, the person is urged after three days of detention and restraint and at the time of every prayer, to perform it. If he does pray all well and good, if not he should be put to death through the sword. Abu Hanifah

holds the view that in such a case, the person is flogged and put to jail but not put to death. al-Mughni, vol.II, p.329. Abu Ya'la, Sharh, p.31b (2770).

295. Ibn Qudamah explains that an iron ware object such as mirror or its like is placed on the stomach so as to prevent the stomach from bloating, and if an iron ware object is not available moist clay is used. M.W.S.K., vol.II, p.307. see also al-Mughni, vol.II, p.336. This indicates that mirrors probably used to be made from iron wares. Abu Ya'la explains that the reason for placing an iron ware object on the stomach is to prevent the stomach from bloating after the person's death. See Abu Ya'la, Sharh, p.32b (2770).

296. This is also the view held by Abu Hanifah. al-Shafi'i holds the view that the mouth of the deceased may be rinsed with water, and water may be drawn into the nostrils, such as is done by a living person. al-Mughni, vol.II, p.341.

297. This indicates that it is acceptable to shroud the deceased in a wrap, a shirt and a loin-cloth, though what is preferable to Ibn Hanbal is to shroud him in three pieces of white cloths, but not in a shirt or a turban. This is also according to the school of al-Shafi'i. According to what is related from Abu Hanifah it is recommendable to shroud the deceased in a loin- cloth, a cloak and a shirt. See al-Mughni, vol.II, p.346.

298. This is also the view held by al-Shafi'i. The rationalists hold the view that the hair should not be braided, instead the hair should be let to fall on the two sides of the cheek, then the veil applied on it. al- Mughni, vol.II, p.352.

299. This is also the view held by Malik and al-Shafi'i. On the contrary, Abu Hanifah holds the view that it is preferable to walk behind the deceased. M.W.S.K., vol.II, p.361. al-Mughni, vol.II, p.354. see also Ibn Rushd, Bidayah, vol.I, p.233.

300. al-Tarbi': is the recommended manner in which the deceased is carried away to burial, i.e. to carry the deceased by the four sides of the bier each at a time beginning by placing the front left side of the bier on the right shoulder, then move to the back placing the left side of the bier on the right shoulder again. Then the front right side of the bier is placed on the left shoulder, then move to the back placing the right side of the bier on the left shoulder again. It is recommended according to the sunnah for four men to carry the deceased, and it is also according to the sunnah to carry the deceased by all the four sides of the bier. See Ibn Qudamah, al-Muqni', vol.I, p.283. See also al-Bahuti, Kashshaf,

vol.II, p.127. This is also the view held by Abu Hanifah and al-Shafi'i. According to Malik, no particular manner (tawqit) is prescribed for carrying away the deceased. The deceased may be carried from any side desired. al-Mughni, vol.II, p.357. M.W.S.K., vol.II, p.359 & pp. 365-366.

301. Ibn Qudamah interprets the amir here to mean the Imam, probably referring to the "supreme leader" of the Muslim community. Ibn Qudamah mentions that if the amir is not available, then his appointed amir (provincial governor). If he is not available then the deputy in terms of the imamate. He added that, on the death of al-Hasan, al-Husayn allowed Sa'id bin al-'As -an appointed amir of Mu'awiyah to al-Madinah- to lead the funeral prayer (Janazah). Then he said: If he is not available, then the hakim leads it. al-Mughni, vol.II, pp.359-360. For information on the institutional development of the imamate, see El[2] under khalifa. Note that the amirs (provincial governors) used to be appointed by the Caliph and from an early age among other duties they led prayers, built mosques and saw to the establishment of Islam in conquered territories. Ibid, under Amir.

302. This is also the view held by al-Shafi'i. Abu Hanifah and Malik hold the view that there is no recitation of the Qur'an, but rather supplications are pronounced in the Janazah prayer. Malik's opinion is that Allah be praised and extolled after the pronouncement of the first takbir. see Ibn Rushd, Bidayah, vol.I, p.235. al-Mughni, vol.II, p.362.

303. This supplication has been mentioned in the commentary as part thereof. see al-Mughni, vol.II, p.363.

304. This view is also held by al-Shafi'i. Abu Hanifah and Malik hold the view that the hands are raised only on the first pronouncement of takbir. al-Mughni, vol.II, p.366. see also Ibn Rushd,Bidayah, vol.I, p.235.

305. According to Abu Hanifah and which is also an opinion of al-Shafi'i, it is preferable to pronounce two taslims one to the right and another to the left, though one taslim is acceptable. Ibn Rushd,Bidayah, vol.I, p.236. al-Mughni, vol.II, p.366.

306. (D) This obviously, is according to one report related from Ibn Hanbal. According to another report, the prayer is not acceptable if the missed takbirs are not made up. This latter view is held by Abu Bakr, and it is also the view held by Malik, al-Shafi'i and Abu Hanifah. See Tabaqat, vol.II, p.85; al-Mughni, vol.II, p.369.

307. Mahram: is one whom it is unlawful for a woman to marry. Lane.

308. The reason for old men to lower the deceased woman

into the grave in the absence of women is, according to Ibn Qudamah, old men have less sexual drive and are far more from being tempted or subjected to temptations. see al-Mughni, vol.II, p.375. Similar explanations have been given by Abu Ya'la. see Abu Ya'la, Sharh, p.42a (2770).

309. See Laoust, Precis, p.48. According to Abu Ya'la, it is only reprehensible to include in the grave of the deceased anything touched by fire, because doing so is an auguring for fire. Abu Ya'la, Sharh, p.43a (2770).

310. (D) According to another view held by Abu Bakr the ma'mum may repeat the takbir up to seven times behind the Imam. The latter view is also held by Ibn Battah (d.387/998). Abu Hafs al-Ukbari (d.387/998) and Abu Ya'la (d.458/1066). It is based on another report from Ibn Hanbal which has been described by Abu Ya'la as authentic. According to another view based on a third report, the Imam should not be followed if it is the fifth takbir. This view is held by Abu Hanifah, al- Shafi'i and Malik. see Tabaqat, vol.II, pp.84-85. see also al-Mughni, vol.II, pp.383-386.

311. There are no differences of opinion among Hanbalis regarding the Imam's position as described by al-Khiraqi. Similar opinion is held by al-Shafi'i. According to Abu Hanifah, the Imam stands towards the chest of the man or a woman. According to Malik, he stands towards the middle of the man, and by the shoulder of the woman. See M.W.S.K., vol.II, pp.394-395.

312. Apparently this is according to the Hanbali school. See Laoust, Precis, p.47. It is also the view held by al- Shafi'i. Malik and Abu Hanifah hold the view that the prayer may only be performed over the grave by the next of kin (wali) of the deceased who has missed the prayer. According to Abu Hanifah, the prayer may be performed until three days since the deceased was buried. al-Mughni, vol.II, pp.381 & 387. See also Abu Ya'la, Sharh, p.43a (2770).

313. dirham: The name of a weight derived from Greek (see EI^2 under dirham). According to Lane, it is an arabacized word from the Persian dirham signifying a certain silver coin. The weight of the Islamic dirham is six daniqs or danaqs. During the pre-Islamic (Jahiliyyah) time there were some light weight dirhams of four danaqs called Tabariyyah, and there were some heavy weight dirham of eight danaqs called Abdiyyah or Baghliyyah. These two were later on combined into two equal parts so that each dirham was six danaqs. see Lane under dirham. See also Ibn Sallam, Kitab al-Amwal, p.210 on the history of the Islamic coinage. Abu Ya'la points out that the

mention of thirty dirhams worth of shround as good enough for a poor person and fifty dirhams for a wealthy person, pertains only to the time of al-Khiraqi. see Abu Ya'la, Sharh, p.45a (2770).

314. This is the case of the baby who has not let out a cry upon delivery. Malik and the rationalists hold the view that the miscarried fetus may not be prayed over unless a cry has been let out upon delivery. Both opinions have as well been attributed to al-Shafi'i. see al- Muhgni, vol.II, p.389. Abu Ya'la, Sharh, p.45a (2770).

315. Ibn Qudamah points out that al-Khiraqi's statement that it is acceptable when necessary for the man to wash his wife means that it is acceptable if there is no one other than himself to wash her, but if it is done when someone else is available it is considered a reprehensible act. Two reports have been related from Ibn Hanbal with regard to whether or not the man can wash his wife. According to one report which is the most widely known opinion of the school the man may wash his wife upon her death. This is also the view held by Malik and al-Shafi'i. According to the other report which is also the view held by Abu Hanifah, the man cannot wash his wife. al-Mughni, vol.II, p.390.

316. (D) This view is based according to Ibn Abi Ya'la, upon an authentic report from Ibn Hanbal. It is also the view held by al-Shafi'i. According to a second report which is the view held by Abu Bakr, the martyr who dies on the battle field may not be washed but may be prayed over. This view is what is most preferable to his master al-Khallal. It is also the view held by Abu Hanifah and Malik. According to a third report, prayer over the martyr in such a case is optional. See Tabaqat, vol.II, p.85; Al-Mughni, vol.II, pp.394-395.

317. Muhrim: one entering upon the state of ihram, i.e. entering upon the performance of acts of hajj or of 'umrah, whereby certain things before allowable, or lawful, to the person became forbidden or unlawful. Lane.

318. see Laoust, Precis, p.48. Also al-Sijistani, Kitab Masa'il, p.141. This is also the view held by al-Shafi'i. Malik and Abu Hanifah hold the view that the muhrim upon death is treated exactly the same as a non- muhrim in terms of the washing and shrouding and so on. al-Mughni, vol.II, p.400. Abu Ya'la, Sharh, p.47b (2770).

319. Malik and Abu Hanifah opine that nothing should be cut from the deceased. al-Mughni, vol.II, p.403. According to one of two opinions of al-Shafi'i, nothing should be cut if the mustache is long. see

Abu Ya'la, Sharh, p.48b (2770).

320. It should be noted that according to al-Shafi'i school, the stomach may be cut open if it is likely that the fetus will live. al-Mughni, vol.II, p.410. Abu Hanifah also opines that the stomach may be cut open. see Abu Ya'la, Sharh, p.50a (2770).

321. See al-Sijistani, Kitab Masa'il, p.156. al-Shafi'i holds the view that every Muslim regardless should be prayed over by the imam and others. al-Mughni, vol.II, p.415; Abu Ya'la, Sharh, p.50b (2770).

322. This is the view held by al-Khiraqi probably based on a report from Ibn Hanbal. It is also the view held by most scholars. However, Ibn Qudamah mentions that according to a report from Ibn Hanbal, the man is laid in the immediate front of the Imam, the child behind the man and the woman behind both of them facing the qiblah. This latter view is held by Abu Hanifah and al- Shafi'i. al-Mughni, vol.II, p.418.

323. Abu Ya'la cites another manner by which a Christian woman who is pregnant by a Muslim could be buried, that is she is buried with her back towards the qiblah, because the face of the fetus in her stomach faces her back, as a result the fetus will be facing the direction of the qiblah. Abu Ya'la, Sharh, p.52b (2770).

324. Different reports have been related from Ibn Hanbal regarding whether or not women may visit the grave yard. According to one report, it is reprehensible to do so. According to another report, it is not reprehensible. al-Mughni, vol.II, pp.424-425.

325. Zakah: is the obligatory alms given according to a fixed rate. See note no.270. It is obligatory upon the attainment of the minimum wealth liable for the payment of zakah (nisab). There are four types of this wealth, according to Ibn Qudamah, as in the following: 1) freely grazing cattle (saimah); 2) land products (Kharij min al-Ard); 3) precious metals (athman); 4) trade goods (urud al-Tijarah). See Laoust, Precis, p.51. For a detailed and comparative study of zakah, see al-Qardawi, Fiqh al-Zakah, 2 vols.

326. Abu Hanifah hold the same view here as Ibn Hanbal. According to al-Shafi'i, the cattle must graze freely for the whole year in order for zakah to be obligatory. al-Mughni, vol.II, p.431.

327. This has been quoted only as part of the commentary of the Mukhtasar. see al-Mughni, vol.II, pp.432-433.

328. (D) Abu Ya'la explains that this means an increase of one camel over one hundred and twenty camels does affect the rate of zakah. Hence for every forty camels, a female camel in its third year is required, and for every fifty camels, a female camel in its

fourth year is required. Thus, three female camels in their third years are required in all. This view is also held by Abu Ya'la and al-Shafi'i. According to another report the rate of zakah is only affected by an increase of ten camels. Hence for ninety-one to one hundred and twenty-nine camels, two female camels in their fourth years are required. For one hundred and thirty camels, a camel in its fourth year and two female camels in their third years are required. This latter view is held by Abu Bakr. According to Ibn Abi Ya'la, both views here have also been attributed to Malik. Abu Hanifah holds the view that after one hundred and twenty camels, the normal calculation is resumed. Hence for every five camels thereafter, a sheep is required, etc. see Tabaqat, vol.II, p.86; al-Mughni, vol.II, pp.435-436.

329. This view is also held by al-Shafi'i. These rationalists hold the view that in this situation its equivalent value is paid by the person, or the person may give out an animal less in age than what is required and pay the difference in dirhams. al-Mughni, vol.II, pp.438-439.

330. al-Khiraqi's view is held by most scholars including Malik and al-Shafi'i. According to Ibn Qudamah, some reports from Abu Hanifah point out that any additional over forty cows is calculated separately according to what is due. al-Mughni, vol.II, p.443.

331. There are no differences of opinion regarding buffaloes and cows combined together to determine the obligation of zakah. Hence, according to the Hanbali school, any of the two kinds of animals may be offered as well for zakah. According to Malik, the larger in number of the two is what is offered. If they are equal in number, any of them may then be offered as zakah. al-Shafi'i holds the view that it is offered from each kind separately. M.W.S.K., vol.II, pp.513-514.

332. This has been quoted only as part of the commentary. see al-Mughni, vol.II, p.447.

333. (D) This view is based on a report described by Ibn Abi Ya'la as authentic. It is also according to him, the view held by most scholars. However, according to another report, if more than three hundred sheep are owned, then four sheep are offered. Thereafter if it increases one sheep over every hundred sheep, one additional sheep will be required. This latter view is held by Abu Bakr. See Tabaqat, vol.II, p.87; al-Mughni, vol.II, p.447.

334. According to Malik and al-Shafi'i, if one of these animals is the best of all the animals available to the person and it is more to the benefit of the poor it may be offered. al-Mughni, vol.II, p.448.

335. Ibn Qudamah explains that it is lawful to give what is older than what a person is required to give. If what is due is available that may be offered. If what is available is worth more than what is due, the person is given the option to either give out that which is available or buy what is required and give it out. This view is held by al-Shafi'i. According to one of two reports related from Abu Hanifah, only one year old goat is acceptable for each of them. According to Malik, a six month old sheep is acceptable for each of them. al- Mughni, vol.II, pp.452-453.

336. This view is also held by al-Shafi'i. According to Malik, group ownership only has effect if each partner owns a minimum of that which is liable for payment of zakah. According to Abu Hanifah it has no effect at all in such a situation. al-Mughni, vol.II, p.454.

337. Wali: i.e. legal guardian who has legal authority (wilayah) over the child.

338. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah, zakah is not required on their wealth except that the tithe (al-ushr) must be paid on their agricultural produce and zakat al-Fitr is also obligatory on them. al-Mughni, vol.II, p.465.

339. Different reports have been related from Ibn Hanbal regarding the payment of zakah on the slave's wealth owned from his master. According to one report, its zakah is due on the slave master. This view is held by the rationalists. According to the other report zakah is not required from the slave's wealth and neither is it obligatory on the slave or the master. This latter view is held by Malik. al-Shafi'i has been quoted on both views. al-Mughni, vol.II, pp.465-466.

340. Mukatab: is the slave who acquires his freedom against a future payment, mostly by installments. Schacht, Introduction, p.129. For information on the laws governing the mukatab and the mukatabah contract, see ibid, pp.42-43; pp.129-130; pp.135-136; pp.186-187. Note also that Abu Hanifah is quoted to have mentioned that one tenth (al-ushr) of his land produce is required, and this is considered according to the hanafi school as land fee (mu'nat al-Ard) and not as zakah. al-Mughni, vol.II, p.466; M.W.S.K., vol.II, p.495.

341. This has been quoted only as part of the commentary. see al-Mughni, vol.II, p.466.

342. This case only pertains to three kinds of wealth liable for payment of zakah, namely; freely grazing cattle, gold and silver, and trade goods. It does not pertain to other wealth such as what is measurable of

agricultural produce and crops, and precious metals a(ma'din). al-Mughni, vol.II, p.467.

343. This is also the view held by Malik. According to Ibn Qudamah's version of the Mukhtasar, "it is permissible to pay zakah, in advance". This is the view held by Abu Hanifah and al-Shafi'i. See al-Mughni, vol.II, p.470.

344. It is obvious that al-Khiraqi allows the payment of zakah in advance of its proper time otherwise this statement could not be significant. Hence Ibn Qudamah's version that <it is permissible to pay zakah in advance> looks more accurate. See note no.343. Also, according to Abu Ya'la's version of the Mukhtasar, "it is permissible to pay zakah in advance". See Abu Ya'la, Sharh, p.62b (2770).

345. The imamate here refers to the supreme leadership of the Muslim Community after the Prophet. For information on intentions connected with the payment of zakah and the use of force, see M.W.S.K., vol.II, pp.676-678; al- Mughni, vol.II, pp.476-481.

346. Abu Hanifah also holds the view that the husband is not entitled to his wife's zakah. This obviously is al- Khiraqi's view. According to al-Shafi'i, the husband may accept his wife's zakah. al-Mughni, vol.II, p.484. This latter view is also based on another report from Ibn Hanbal. see Abu Ya'la, Sharh, p.64a (2770). Note that Abu Ya'la explains the basis of the analogy for the husband's non-entitlement to his wife's zakah. He said this is due to the marriage relationship between them, and since the husband cannot be entitled to his wife's zakah on the basis of the marriage tie, the same is true for the wife, she cannot as well be entitled to her husbands's zakah on the basis of the same tie. ibid, p.64a (2770).

347. This indicates that a non-Muslim may work for zakah collection agency. It is a view based on one report from Ibn Hanbal. According to another report from him, it is not permissible for the disbeliever (kafir) to work for such an agency, because the disbeliever is not trustworthy. Also it is lawful to employ a wealthy person or a close relative of the zakah-payer in such an agency. al-Mughni, vol.II, p.488.

348. Banu-Hashim: i.e. children of Hashim among whom was Shaybah popularly called Abdul-Muttalib the grandfather of the Prophet. Hashim bin 'Abd Manaf was the great- grandfather of the Prophet who made the Quraysh tribe dominant in Makkah, and not only did he recognize the pilgrimage but also held the offices of food and water supply for the pilgrims. His brothers were 'Abd Shams, al Muttalib and Nawfal. see

EI[2] under Hashim B. 'Abd Manaf. see Haykal, Life of Muhammad, pp.35-37.

349. Mawali: the plural of mawla, i.e. one who is under the patronage of his emancipation whom the emancipator is bound to aid, and whose property he inherits if he dies leaving no natural or legal heir. Lane. Ibn Qudamah points out that most scholars agree that the mawali of Banu Hashim may be given zakah. al-Mughni, vol.II, p.489. Two reports have been related from Ibn Hanbal regarding Banu'l-Muttalib. One report conveys that they are not entitled to zakah as Banu Hashim. The other report points out that they may accept it. This latter view is held by Abu Hanifah. ibid, vol.II, p.490.

350. There are no differences of opinion that a rich person is not entitled to zakah. However, there are differences of opinion on who is a rich person. According to one report from Ibn Hanbal, a rich person is one who owns fifty dirhams or its equivalent in gold.Another report points out that a rich person is one who maintains what can possibly make him needless of zakah. This view is held by Malik and al-Shafi'i. According to the rationalists the rich person is one who attains the minimum wealth liable for payment of zakah (nisab). al-Mughni, vol.II, pp.493-494. Note that dinar is a word derived from Greek (see EI[2] under dinar). According to Lane, it is an arabacized word from the Persian din'ar, meaning "The law brought it" into being or circulation. It is the name of a certain gold coin whose weight is seventy-one barley corns and a half; and it is the same as the Mithqal. Lane.

351. see Qur'an:Surah 9:60; and for more detailed information on the recipients of zakah, see Ibn Sallam, Kitab al-Amwal, pp.240-243.

352. (D) This is also the view held by Abu Hanifah and Malik. Abu Bakr holds the view that the whole zakah cannot be confined to only one person from the eight recipients of zakah. It is rather distributed among them altogether. This latter view is also held by al-Shafi'i. see Tabaqat, vol.II, p.87; al-Mughni, vol.II, p.499.

353. Ibn Qudamah points out that most scholars do not recommend that zakah be transferred from one city to another. al-Mughni, vol.II, p.501. According to Abu Hanifah, it may be transferred from on city to another. see Abu Ya'la, Sharh, p.66b (2770).

354. This view is also held by Malik. According to al-Shafi'i, the passing of a complete year (al-hawl) by a wealth liable for payment of zakah is not at all based on the hawl of another wealth, hence according to this view zakah may not be paid on the second

cattle owned until a complete year has passed by it since the time it was owned from its exchange with the first cattle. see al-Mughni, vol.II, p.503.

355. Malik also shares the same view. However, Abu Hanifah and al-Shafi'i believe that in such a situation zakah is no longer obligatory. al-Mughni, vol.II, p.504.

356. Obviously this is according to the Hanbali school. It is also according to the opinion of most scholars particularly Malik, al-Shafi'i and the two disciples of Abu Hanifah, namely, Abu Yusuf and al-Shaybani. Abu Hanifah holds the view that zakah is obligatory if less or more than five wusuq is obtained. al-Mughni, vol.III, p.7

357. 'Ushr: one tenth or the tithe. It applies here to one-tenth of the produce of the land offered as zakah. For detailed information on the ushr, see EI[1] under 'ushr. According to Ibn Qudamah, there are no differences of opinion on the wusuq being equivalent to sixty Sa', but there are differences of opinion regarding the equivalency of Sa' in terms of ritl. According to Lane, the Sa' is equivalent to 5-1/3 ritl by the measure of Baghdad, and of the people of Hijaz. Ibn Qudamah mentions that the Iraqi ritl is equivalent to 128-4/7 dirhams (see note no.101). Its weight in terms of mithqal was seventy mithqal until another mithqal equivalent to 1-3/7 dirhams was added on to the ritl amounting to 91 Mithqal hence completing the weight in dirhams to 130 dirhams. However, Ibn Qudamah points out that the weight is determined on the basis of the original weight of mithqal before the later increase. al-Mughni, vol.III, p.11.

358. These are the two principal divisions of land taken from the non-Muslims. In detail, there are three main divisions namely: 1) Land taken by force of arms. The Imam in this case, has the option to decide on what is best to be done with this land. Ibn Sallam (157-224 A.H./774-838 C.E.) points out that there are three differences of opinion regarding this type of land. According to one opinion, such a land is treated as spoils of war (ghanimah) four-fifths thereof divided among those who participated in the taking of the land, and the remaining one-fifth goes to those prescribed by the Qur'an (see Surah 8:41). According to another opinion, it is left in the hands of the imam to decide whether it should be considered as spoils of war and be divided accordingly as in above, or whether it should be considered as booty (fay') in which case it could not be divided at all but rather treated as an endowment (waqf) for all Muslims. See Ibn Sallam, al- Amwal, p.31. 2) Land from which its people has departed out of fear and

fright. Such a land is treated as booty (fay') for all Muslims and as such is considered as an endowment for all of them. 3) Land taken peacefully. This is subdivided into two divisions. a) Land taken peacefully on the condition that the land be considered Muslims property but left in the hands of its people for the payment of Kharaj. This type of land is treated as an endowment for the Muslims. b) Land taken peacefully on the condition that the land be considered the property of its people who are required to pay Kharaj on it. This type of land is considered as the property of its people and the Kharaj paid on it is treated as Jizyah (poll-tax). On becoming Muslims, the people are exempted from the payment of the Kharaj. al- Bahuti, Kashshaf, vol.III, pp.94-96. see also al- Mughni, vol.III, pp.24-25.

359. That is obligatory sadaqah which is zakah. This case pertains to a Muslim who owns such a land. He only pays zakah on the produce of the land, but not kharaj (land- tax). Kharaj is paid only by the non-Muslim on such lands, and on becoming Muslim the person is exempted thenceforth from the payment of the Kharaj. see al-Mughni, vol.III, p.22, p.28.

360. Kharaj: is legally used in the sense of land tax. (See El[2] under Kharadj) Such lands are termed Kharajiyyah. Lane. For a detailed discussion of the origin of this word and its historical development, see El[2] under Kharadj. Abu Hanifah holds the view that Kharaj and 'Ushr combined cannot be due on the same land, hence according to this view, in the case of a land taken by force kharaj is only what is due. According to al-Shafi'i, Kharaj is not due on a land taken by force unless it is Ard al-Sawad. Abu Ya'la, Sharh, p.70b (2770). According to Lane, Ard al-Sawad is the district of towns or villages, and cultivated lands of al-Iraq; so called because of the Khadrah i.e. both greenness and a color approaching to blackness.

361. See Ibn Hanbal, Masa'il - related by Ibn Hani, vol.I, pp.126-127. This is one of three reports from Ibn Hanbal. It is also the view held by al-Shafi'i and the rationalists. 2) Wheat may be combined with barley to complete the nisab and likewise legumes. This is also the view held by Malik. 3) All kinds of seeds may be combined with one another to complete the nisab. As far as the combination of gold with silver is concerned, two opposing reports are related on whether it is permissible or not. al-Mughni, vol.III, pp.32-34.

362. This has been quoted only as part of the commentary. see al-Mughni, vol.III, p.31.

363. (D) Mithqal: A well known weight of a dirham and

three sevenths of a dirham. Lane. (see note no.357) Al- Khiraqi maintains that gold or trade goods may be combined with dirhams to complete the nisab for the payment of zakah, and vice versa. This view is also held by al-Khallal, Abu Ya'la, Abu Hanifah, and Malik. According to Ibn Abi Ya'la, this view is based on an authentic report. Abu Bakr holds a different view, and that is, they cannot be combined, instead each has to be treated separately. This latter view is also held by al-Shafi'i. see Tabaqat, vol.II, pp.87-88.

364. This view is also held by al-Shafi'i and Malik. According to Abu Hanifah, nothing is required on the excess over the nisab until it is forty dirhams or four dinars in which case five dirhams are paid on every forty dirhams, and one-tenth dinar paid on every four dinars accordingly. al-Mughni, vol.III, p.39.

365. This is also according to the view of Malik and al-Shafi'i. The rationalists maintain that zakah is required on it. al-Mughni, vol.III, pp.41-42.

366. Buried treasure of Jahiliyyah (rikaz) signifies especially property that has been buried before Islam, and not metals or other minerals. Lane.

367. i.e. those persons entitled to Zakah. See Qur'an:Surah 9:60.

368. Ibn Qudamah explains that in such a situation one fortieth of it is paid as zakah, and this apparently is according to the Hanbali school. It is also the view held by Malik. According to Abu Hanifah, one-fifth of it is paid out, for it is treated as buried treasure (rikaz). Al-Shafi'i treats it as zakah; but as far as how much is paid on it, both views as mentioned above have been attributed to him. al-Mughni, vol.III, p.53.

369. According to Ibn Qudamah, zakah here is paid by the value of the goods and not out of the goods. Apparently, this is according to the Hanbali school. It is also one of the two views of al-Shafi'i. According to the other view, the person has the option either to pay it by the value or to pay it out of the goods. This latter view is also held by Abu Hanifah. al- Mughni,vol.III, p.59.

370. Hence, according to the Hanbali school the passing of a year (al-hawl) by the wealth begins from the time the nisab is attained, and the nisab must be maintained throughout the year for the payment of zakah to be obligatory. This is also the view held by al-Shafi'i. Malik holds the view that the nisab does not have to be attained at the beginning of the year. If it is attained at the end of year, payment of zakah is obligatory. According to Abu Hanifah payment

of the zakah is determined by the beginning and the end of the year, and not by the middle of it. If nisab is attained at the beginning and at the end of the year zakah is obligatory. al-Mughni, vol.III, pp.59-60.

371. This is also the view held by Abu Hanifah. According to al-Shafi'i, it is assessed based on what it was purchased for in gold or silver, because the nisab of trade goods is based on what it was purchased for. See Abu Ya'la, Sharh, p.76b (2770). al-Mughni, vol.III, p.60.

372. This is also the view held by al-Shafi'i and the rationalists. According to one of two reports related from Malik, intentions simply cannot eliminate the actual purpose for which the commodity was purchased. i.e. for investment. see al-Mughni, vol.III, p.62.

373. Malik and Abu Yusuf also share this same opinion, i.e. they base the hawl of the profit made on that of the original wealth. According to Abu Hanifah, the hawl of any profit is based on the hawl of its same kind. al- Shafi'i holds the view that if the profit is made before the end of the year in dinars or dirhams, its hawl may not be based on the hawl of the nisab; a year must pass by it before paying its zakah. al-Mughni, vol.III, pp.63-64.

374. This view is also held by the rationalists. According to al-Shafi'i, zakah is still obligatory and must be paid in this case even if the debt has yet not been claimed. Abu Ya'la, Sharh, pp. 77b & 78a (2770) al-Mughni, vol.III, p.71.

375. The implication here is that if the wealth is not recovered, there is no payment of zakah. It is related from Ibn Hanbal, based on Ibn Umar's opinion, that if a person's zakah is taken from him by force, that is valid enough, the person does not have to pay another zakah. see Ibn Hanbal, Masa'il, - related by Ibn Hani, vol.I, p.115. see also M.W.S.K., vol.II, p.676. Note that if the wealth taken by force is recovered, Ibn Hanbal only recommends in this case the payment of its zakah but he does not make it obligatory. See note no.376.

376. Ibn Hanbal here, makes a distinction between a debt which when paid is subject to outstanding zakah, and the wealth taken by force and which does not require payment of zakah after it is recovered. Ibn Hanbal only prefers the payment of its zakah.

377. Apparently this is based on a report from Ibn Hanbal. Hence, according to the Hanbali school, the sale of a property with the guarantee of the right of withdrawal transfers immediately the ownership to the purchaser. According to another report from Ibn Hanbal, ownership is not transferred until the period

of the right of withdrawal is over. This latter view is also held by Malik. According to Abu Hanifah, ownership is not transferred if the right of withdrawal is reserved by the vendor, but if reserved by the purchaser the vendor loses ownership of the property thought it has not yet entered into the possession of the purchaser. Three opinions have been attributed to al-Shafi'i. Two of them are as the above two reports of Ibn Hanbal; and the third opinion points out that the vendor's ownership is not transferred if the transaction is declared void by both of them, but only if it is concluded by both of them. al-Mughni, vol.III, p.77.

378. See notes nos.100 & 102. Also, Malik and al-Shafi'i hold the view that no less than a Sa' of any kind of food liable for zakah is acceptable for Zakat al-Fitr from each person. The rationalists hold the view that one half of a Sa' is acceptable from wheat specifically. Two reports have been related from Abu Hanifah regarding the offering of raisins. According to one report, one Sa' is acceptable. According to the other report, one half of a Sa' is acceptable. al- Mughni, vol.III, p.81.

379. According to Ibn Qudamah, there are differences of opinion regarding the equivalency of Sa' in terms of ritl. See note no.357. However, Ibn Qudamah mentions that the most accurate figure is that a Sa' is equivalent to 5-1/3 ritl. See al-Mughni, vol.III, p.11.

380. (D) This view is based on a report from Ibn Hanbal. It is also the view held by Abu Hanifah. According to another report, it is acceptable to offer cottage cheese for Zakat al-Fitr even if it is not part of what the people eat. This latter view is held by Abu Bakr. It is also the view held by Abu Ya'la and Malik. Both reports as mentioned above have also been attributed to al-Shafi'i. see Tabaqat, vol.II, pp.88-89.

381. See al-Sjistani, Masa'il, p.85. To al-Shafi'i, it is preferable to offer wheat. See Abu Ya'la, Sharh, p.81a (2770).

382. This apparently is the position of the Hanbali school. According to Malik, Zakat al-Fitr is offered from the major food in the city. al-Shafi'i holds the view that it is given out of the most available food to the person. al-Mughni, vol.III, p.85; M.W.S.K., vol.II, p.657.

383. This basically is Ibn Hanbal's view. However, he expresses his view with some degree of hesitation as he mentions in response to a question put to him, saying: "I am afraid it may not be accepted from him". see al- Sjistani, Masa'il, p.85. According to

Malik and al- Shafi'i, its value in cash is not acceptable. According to Abu Hanifah, it is acceptable to give out the value in cash. al-Mughni, vol.III, p.87. See also Abu Ya'la, Sharh, p.83a (2770).

384. According to the most widely known opinion of the Hanbali school, it is not acceptable to advance the payment of Zakat al-Fitr, more than two days earlier before the 'Id. Some Hanbalis, according to Ibn Qudamah, allow its payment after half of the month of Ramadan has passed. Abu Hanifah allows its payment in advance from the beginning of the hawl, thus likening Zakat al-Fitr to Zakah of wealth (zakat al-Mal). According to al-Shafi'i, it may be paid from the beginning of Ramadan. al-Mughni, vol.III, p.90; M.W.S.K., vol.II, pp.668-669.

385. These are the person's dependents to whom maintenance is due. Hence, it is obligatory to pay the zakah on behalf of one's wife. According to Abu Hanifah, it is not obligatory to do so on behalf of one's wife; she is rather obligated to pay on behalf of herself. see Ibn Rushd, Bidayah, vol.I, p.279; al-Mughni, vol.III, p.90.

386. See Laoust, Precis, p.59. Abu Hanifah likens zakat al- Fitr to a certain degree to zakat al-Mal. (see note no. 384), hence, according to the rationalists Zakat al- Fitr is not obligatory until two hundred dirhams or its value in excess is owned. See Abu Ya'la, Sharh, p.84a (2770). al-Mughni, vol.III, p.94.

387. According to Malik, it is obligatory on a person to pay zakat al-Fitr on behalf of his mukatab. al-Mughni, vol.III, p.96.

388. This has been quoted only as part of the commentary. See al-Mughni, vol.III, p.96.

389. (D) Abu Ya'la also holds the same view; and this is based on one report from Ibn Hanbal. According to another report, each person must pay according to the portion owned, hence one Sa' is paid by all of them. This latter view is held by Abu Bakr. It is also the view held by Malik and al-Shafi'i, Tabaqat, vol. II, p.88; al-Mughni, vol.III, p.97.

390. Ibn Hanbal explains that if there are two of them, each person pays one half of a Sa'. See Ibn Hanbal, Masa'il -related by 'Abd-Allah, p.168. This is the report on which Abu Bakr's view is based. See note no.389.

391. See Qur'an:Surah 9:60.

392. see Laoust, Precis, p.59 & p.61.Ibn Qudamah explains that no differences of opinion are known regarding the permissibility for one person to offer the zakah to a group of people who deserve it. However, differences of opinion are reported on whether or not

it is permissible for a group to offer the _zakah_ to only one person. al-Shafi'i holds the view that _zakah_ must be distributed among the deserving group and not to one person alone. Malik and Abu Hanifah hold the view that _zakah_ may be offered to one person. See _al-Mughni_, vol.III, p.99; see also note no.352. Abu Ya'la, _Sharh_, p.85b (2770).

393. It is understood from al-Khiraqi's statement here that it is not obligatory on a person to pay _zakat_ al-Fitr on behalf of the fetus. However, according to another report from Ibn Hanbal, it is obligatory to do so. See Abu Ya'la, _Sharh_, p.85b (2770). _al-Mughni_, vol.III, p.99.

394. _'Uthman bin 'Affan_: was the third caliph from 23 A.H. to 35 A.H. corresponding to 644 C.E. to 655 C.E. He belonged to the Meccan family of the Banu 'Umayyah For detailed information and discussion of his life time, see _El_[1] under 'Othman B. 'Affan.

395. _Sh'aban_: i.e. the eighth month of the Arabian year or the lunar year. It is so called from _tasha'-'aba_ meaning it became separated. This is because the Arabs used to separate or disperse themselves in such a month in search of water or according to some, for predatory expeditions after having been restrained from it during the sacred month of _Rajab_. _Lane_.

396. This is according to one report related from Ibn Hanbal, and it is the view held by most Hanbali scholars. According to a second report related from him, the people follow the Imam. When he begins the fast they fast, if he does not they do not. According to a third report it is not obligatory in such a case to fast the next day, and if fasted it is not acceptable. This latter view is held by most scholars including Abu Hanifah, Malik and al-Shafi'i. _al-Mughni_, vol.III, p.108.

397. Ibn Hanbal, Malik and al-Shafi'i among the four major sunni schools hold this view. According to Abu Hanifah such an obligatory fast is acceptable even if intention has not been formed during the night preceding the day of fasting. _al-Mughni_, vol.III, p.109.

398. This is according to the views of Ibn Hanbal and al-Shafi'i. According to Abu Hanifah the fast is acceptable. _al-Mughni_, vol.III, p.115.

399. Abu Hanifah, al-Shafi'i and Ibn Hanbal hold this view. According to Malik, voluntary fasting cannot be accepted unless an intention has been formed during the night preceding. See Abu Ya'la, _Sharh_, p.88b (2770); _al-Mughni_, vol.III, p.113.

400. Abu Hanifah, Malik and al-Shafi'i hold the view that cupping does not break one's fasting. see _al-Mughni_, vol.III, p.

401. al-Shafi'i holds the view that snuffing breaks the fast. Malik holds the view that unless what is snuffed drops into the throat the fast is not broken. *al- Mughni*, vol.III, p.121.

402. According to Malik and Ibn Hanbal, ejaculation of prostate fluid as a result of kissing breaks one's fast. Abu Hanifah and al-Shafi'i hold the view that it does not break the fast. *al-Mughni*, vol.III, p.127.

403. Malik and Ibn Hanbal hold this view. According to Abu Hanifah and al-Shafi'i the fast is not invalid in such a situation. *al-Mughni*, vol.II, p.129.

404. *Kaffarah*: signifies an expiation for a sin or crime or a violated oath, an action which has the effect of effacing a sin or crime or a wrong action. *Lane*. see also *EI^2* under *Kaffara*.

405. This is also the view held by Abu Hanifah and al-Shafi'i. Malik holds the view that in a state of forgetfulness the fast is still considered broken. *al- Mughni*, vol.III, p.131.

406. Two reports have been related from Ibn Hanbal regarding semen if discharged from sexual intercourse occurring in other than vagina. According to one report which is also the view held by Malik, *Kaffarah* is required in such a case. According to the other report which is also the view held by Abu Hanifah and al-Shafi'i, no *kaffarah* is required. *al-Mughni*, vol.III, p.135.

407. Most jurists (*al-Fuqaha*) hold the view that if an obligatory fast is broken through sexual intercourse whether in the month of Ramadan or in any other month the fast must be performed again and *kaffarah* carried out as well. According to one of two opinions of al-Shafi'i, any person obligated to carry out *kaffarah* does not have to repeat the fast. *al-Mughni*, vol.III, p.134.

408. The order here for the performance of the *kaffarah* is according to the most widely know opinion of the Hanbali school. It is also according to the view of al- Shafi'i, and the rationalists. According to another report from Ibn Hanbal which is also according to a report related from Malik, the person has the option in carrying out the *kaffarah* to either emancipate a slave or fast or feed. See Abu Ya'la, *Sharh*, p.93a (2770); *al-Mughni*, vol.III, p.140.

409. *Mudd*: a certain measure with which corn is measured. It is equal to 1-1/3 *ritl* (pint) i.e. the quarter of a *Sa'*; the *Sa'* being 5-1/3 pints. Such was the *Mudd* of the Prophet. According to Abu Hanifah, the *Sa'* is equivalent to 8 pints or the quantity of corn that fills the two hands of a moderate size man when he extends his arms and hands; and therefore called

Mudd. Lane.

410. This is according to the Hanbali school. Hence fifteen Sa' of wheat or thirty Sa' of dates or barley are required to feed sixty needy persons. This means that a Sa' is equivalent to four Mudds. According to Abu Hanifah, half a Sa' of wheat or one Sa' of other than wheat is required to feed each needy person. al-Shafi'i holds the view that a Mudd of any kind of food may be used to feed a needy person. al-Mughni, vol.III, pp.141-142.

411. This is also the view held by the rationalists. Some Hanbalis hold the view that two kaffarahs are required. This latter view is also held by Malik and al-Shafi'i. see al-Mughni, vol.III, p.144.

412. There are differences of opinion regarding the second sexual act if committed the same day after kaffarah has been performed for the first sexual act. According to Ibn Hanbal a second kaffarah is required. Abu Hanifah, Malik and al-Shafi'i hold the view that in such a case nothing is binding on the person for the second sexual act. al-Mughni, vol.III, p.144.

413. This undoubtedly is according to the Hanbali school. It is also according to the most widely known opinion of al-Shafi'i. According to one of the two reports from Malik, kaffarah is only binding on the nursing woman. Abu Hanifah holds the view that kaffarah is not binding on both the pregnant woman and the nursing woman. al- Mughni, vol.III, pp.149-150.

414. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah, kaffarah is not binding on the person for delaying to make up the fast for the missed days to the following year. al-Mughni, vol.III, pp.153-154 see also Abu Ya'la, Sharh, p.95b (2770).

415. al-Shafi'i and Ibn Hanbal hold this view. According to Abu Hanifah and Malik, once the fast is started it is binding on the person to complete it. It may only be broken if there is an acceptable excuse. ('udhr) in which case the fast may not be made up; if otherwise the fast must be made up. According to a report from Malik, the fast may not be made up. al-Mughni, vol.III, p.159. Ibn Rushd, Bidayah, vol.I, p.311. See also Abu Ya'la, Sharh, p.97a (2770).

416. The analogy for the child to fast at the age of ten is based on the fact that the child is disciplined at the age of ten to pray as prescribed by the Messenger of Allah-may the blessing and peace of Allah be upon him. al-Mughni, vol.III, p.161; M.W.S.K., vol.III, pp.90-91.

417. According to the most widely known opinion of Ibn Hanbal, the sighting of the crescent of Ramadan by

one reliable person is acceptable, hence other people must begin the fast by the announcement of the sighting. This is also according to an authentic report from al- Shafi'i. According to another report from Ibn Hanbal, the sighting of two men is preferable. Malik holds the view that the sighting is only acceptable from two persons. Abu Hanifah holds the view that it is acceptable from one person if the sky is cloudy. However it must be sighted by several people if the sky is clear. al-Mughni, vol.III, p.164.

418. Shawwal: literally signifies the tail of the scorpion. Here, it stands for the month next after Ramadan whichis the tenth month of the lunar year. It is said that it is so called because when it was first named as such it coincided with the season when the she-camels - being seven or eight months gone with young - raised their tails. Hence the Arabs used to regard marriage- contracts in this month as of evil omen, and used to say that the woman married in this month would resist her husband like as the she-camel resists the stallion and raises her tail; but the Prophet abolished their thus auguring, and he married 'A'ishah in this month. Lane.

419. The same is reported from Malik. According to al-Shafi'i, it is permissible to eat at a place where the person cannot be seen by anyone. al-Mughni, vol.III, p.166.

420. This is probably based on what is related by al-Bukhari from Ibn 'Umar and 'A'ishah who said: "It is not permissible to fast the days of tashriq except for one who is unable to find the offering (al-Hady)", i.e. referring to the mutamatti'. See Qur'an:Surah 2:196. Other obligatory fasts are based analogically on what is related above. See M.W.S.K., vol.III, p.98, p.111.

421. (D) This means that the fast is not broken in this case. This obviously is the view held by al-Khiraqi based on the most widely known opinion of Ibn Hanbal. This is also the view held by Abu Hanifah, Malik and al-Shafi'i. According to Abu Bakr, if the crescent is sighted before noon it is considered as for the previous night, if sighted in the afternoon then it is considered as for the following night. see Tabaqat, vol.II, p.89; al-Mughni, vol.III, p.173.

422. Sahur: is a meal or food that is eaten at the time a little before daybreak called the sahur. Lane.

423. The fasting of six days of Shawwal is recommended by many scholars including al-Shafi'i. According to Malik, it is a reprehensible act (Makruh). al-Mughni, vol.III, p.176. al-San'ani (d.1182 A.H.) explains what is meant by fasting one's lifetime as he points

out that the reward for performing a good deed is ten times, therefore the fasting of the months of Ramadan is equivalent to the reward of ten months, and the six days of Shawwal is two months. Hence if the fasting of Ramadan and six days of Shawwal is performed every year, the person is rewarded as if he had fasted his lifetime. However, al-San'ani cautions that this Hadith is not in anyway conveying that it is permissible to fast one's lifetime. See al-San'ani, Subul, pp.671-672. Similar explanations have been given by Ibn Qudamah. See M.W.S.K., vol.III, pp. 103-104.

424. 'Ashura': is the tenth day of the first month (Muharram) of the lunar year.

425. al-bid: The term is either ayyam al-bid or simply al-bid for ayyam al-layali 'l-bid (the days of the white nights) i.e. the days of the 13th and 14th and 15th nights of the month. So called because they are lighted by the moon throughout. Some say the days of al-bid are the 12th and 13th and 14th nights, but this, according to Lane, is of weak authority.

426. I'tikaf: Is the act of secluding oneself in the mosque performing a particular sort of religious service with the observance of certain conditions. Lane. See also El[2] under i'tikaf.

427. This is according to the most widely known opinion of Ibn Hanbal. It is also the view held by al-Shafi'i. According to another report from Ibn Hanbal, fasting is conditional upon the performing of I'tikaf. This latter view is also held by Abu Hanifah and Malik. al-Mughni, vol.III, p.188; Abu Ya'la, Sharh, p.102a (2770).

428. According to most scholars, I'tikaf may be performed in any mosque. See Abu Ya'la, Sharh, p.102b (2770).

429. This is according to one report from Ibn Hanbal. It is also the view held by Malik, al-Shafi'i and the rationalists. According to another report from Ibn Hanbal, it is permissible to attend the sick or funeral prayer outside of the mosque. al-Mughni, vol.III, p.194. See also Abu Ya'la, Sharh, p.102b (2770).

430. Kaffarah of oath: is the expiation for a violated oath or vow by feeding ten needy persons or clothing them or emancipating a slave. If unable to do so, then three days are fasted. See Qur'an:Surah 5:89.

431. al-Shafi'i holds the view that the person performing the i'tikaf may sell, buy or sew or talk so long as it is not sinful. al-Mughni, vol.III, p.200.

432. 'Iddah: is the woman's waiting period after divorce, or after the husband's death until she may marry again. Lane. See also El[2] under 'iddah. Here, the 'iddah is four months and ten days. See Qur'an:Surah

2:234. The mu'taddah is the woman performing the 'iddah. Note that the widow in such a situation must leave the mosque in which she was performing the i'tikaf before the death of her husband in order to carry out the 'iddah. This is also the view held by al-Shafi'i. According to Malik, she must complete the i'tikaf first before she returns to her husband's home for the 'iddah. al- Mughni, vol.III, p.204.

433. It is only recommendable, according to the Hanbali school for the menstruating woman to pitch a tent for herself somewhere in the public square of the Mosque. According to Malik and al-Shafi'i, in such a situation the menstruating woman returns to her home until she enters into the state of purity and then returns to the mosque to complete the i'tikaf. al-Mughni, vol.III, p.206.

434. i.e. the mosque is entered before sunset of the first night of the month. This is according to one report from Ibn Hanbal. This is also the view held by Malik and al-Shafi'i. According to another report from Ibn Hanbal, the person enters the mosque before the appearance of the dawn of the first day of the month. al-Mughni, vol.III, p.207.

435. Hajj: is the performing of pilgrimage to Makkah and Mount 'Arafah observing all the rites and ceremonies prescribed at, and between those two places. It differs from 'umrah in that hajj is performed at a particular time of the year and is not complete without the halting at 'Arafat on the day of 'Arafah. Hence it is called the greater pilgrimage (al-hajj al-Akbar) and the 'Umrah is termed the minor pilgrimage (al-hajj al- Asghar). Lane. See also $E1^2$ under hadjdj.

436. 'Umrah: a religious visit to the sacred places at Makkah with the performance of the ceremony of al-Ihram, the walking seven times round the ka'bah, and the ritual walk between al-Safa and al-Marwah. Lane. According to Ibn Qudamah, Ibn Hanbal has specifically pointed out that it is not obligatory on the people of Makkah to perform 'Umrah. al-Mughni, vol.III, p.219.

437. The sickness meant here is that which may prevent the person from undertaking the trip or completing the pilgrimage or 'umrah rites. A person affected by physical disability though not an elderly may appoint another person to perform it on his behalf. The inability to remain stable sitting or travelling on a camel's back exempts the person from performing hajj or 'umrah by himself, but such instability is not restricted to sitting only on a camel's back, other means of transportation are also included. Abu Hanifah and al-Shafi'i also hold the above view.

According to Malik, performance of pilgrimage (hajj) is not obligatory on a person unless it can be performed by oneself. al-Mughni, vol.III, p.222.

438. If the hajj is performed on behalf of a sick person, it is still valid even after being healed and there is no need to perform the hajj again. This is according to the Hanbali school. al-Shafi'i and the rationalists hold the view that if the person is healed later on, it is necessary to perform it again. al-Mughni, vol.III, pp.222-223.

439. (D) This view is also held by al-Shafi'i. Abu Hanifah and Malik also hold the view that it is acceptable for a person who has not performed the hajj for himself to perform it on behalf of another person. Abu Bakr holds the view that in such a case, the hajj is invalid and unacceptable for both the person performing it and for the one whose behalf it is being performed. See Tabaqat, vol.II, p.89; al-Mughni, vol.III, pp.235-236; Abu Ya'la, Sharh, p.110b (2770).

440. Malik and al-Shafi'i hold the view that the child's guardian (wali) may assume the ihram on behalf of the child. According to Abu Hanifah it cannot be considered effective whether assumed by the child himself or on his behalf. al-Mughni, vol.III, p.241; Abu Ya'la, Sharh, pp.111a-111b (2770).

441. This is according to one of two opinions of al-Shafi'i. His other opinion states that it is valid only for the person carrying another. According to Abu Hanifah, it is valid for both of them. According to Abu Hafs al- Ukbari, another Hanbali scholar, it is not valid for both of them. al-Mughni, vol.III, pp.243-244. See also Abu Ya'la, Sharh, p.113b (2770).

442. Miqat: is the place traditionally stipulated for the assumption of ihram. See El^2 under ihram. Laoust, Precis, pp.74-75.

443. Dhu'l-Hulayfah: is the same place known today as Abar 'Ali. See El^2 under ihram.

444. The closest place to Makkah where intentions for umrah may be formed is Tan'im. Hence the Prophet instructed 'A'ishah to form her intention for umrah at Tan'im. See al-Mughni, vol.III, p.246. Laoust, Precis, p.75.

445. Ihram: is the affirmation of intention to enter into a state of consecration. This is the state of temporary consecration of someone who is performing hajj or 'umrah. El^2 under ihram; Laoust, Precis, p.76.

446. Malik also holds the view that it is preferable to assume ihram at the miqat, but only reprehensible to do so before reaching the miqat. According to Abu Hanifah, it is preferable to assume ihram from one's

country. Both the above view have also been attributed to al- Shafi'i. al-Mughni, vol.III, p.250; Abu Ya'la, Sharh, p.112b (2770).

447. Malik also holds this view. Apparently al-Shafi'i school does not require any offering if the person returns to the actual miqat. Abu Hanifah also does not require blood sacrifice if the appointed miqat is returned to. al-Mughni, vol.III, p.252; Abu Ya'la, Sharh, p.114a (2770).

448. This is according to the opinion of the majority of scholars (al-Jumhur). According to a minority opinion, assumption of ihram at the miqat is a basic element (rukn), hence the hajj is invalid if ihram is not assumed at the miqat. al-Mughni, vol.III, p.255.

449. The following are the months of hajj: Shawwal, Dhu-'l- Qa'dah, and the first ten days of Dhu-'l-Hijjah. See end of section 7.3 and see note no.455. According to Ibn Hanbal, Abu Hanifah and Malik, the ihram for hajj if entered into before the months of hajj is still valid if the person remains in the state of ihram until the time of hajj. According to al-Shafi'i, in such a situation the ihram for hajj is turned into 'umrah. al- Mughni, vol.III, p.256; Abu Ya'la, Sharh, p.114b.

450. tamattu': is the intention to perform the 'umrah first and then to enjoy the freedom of a normal life, not resuming the ihram until the eighth day of Dhu-'l- Hijjah. Hence, the pilgrim deconsecrates himself by having a few locks of hair cut off. And in this case an offer of blood sacrifice is required. Abu Ya'la confirms that tamattu' is most preferable to Ibn Hanbal. Abu Ya'la, Sharh, p.115b, p.116a (2770). Laoust, Precis, p.76. al-Mughni, vol.III, p.260. El[2] under Hadjdj.

451. Ifrad: is the intention to perform only the hajj (see next note). Hence the pilgrim in this case, does not relinquish the state of ihram after the rites of arrival at Makkah have been performed. Ifrad is most preferable to al-Shafi'i. Abu Ya'la, Sharh, p.116a (2770). Laoust, Precis, p.76. al-Mughni, vol.III, p.266. El[2] under Hadjdj.

452. Qiran: is the intention to perform the 'umrah and the hajj together without relinquishing the state of ihram until the pilgrimage rites have been completed. Qiran is most preferable to Abu Hanifah. Abu Ya'la, Sharh, p.116a (2770). Laoust, Precis, p.76; al-Mughni, vol.III, p.267. El[2] under Hadjdj.

453. talbiyah: is to pronounce the formula: "Here I am O Allah....You have no partner", as stated here by al-Khiraqi. This is known as the talbiyah of the Messenger of Allah -may the blessings and peace of Allah be upon him. See al-Mughni, vol.III, p.271.

Laoust, Precis, pp.76-77.

454. See al-Mughni, vol.III, pp.274-275. According to a report from Ibn Hanbal, Abu Bakr al-Siddiq ordered her to preform the ritual bath, which probably means that he did that on the basis of instruction received from the Messenger of Allah. See al-Sijistani, Masa'il, p.101.

455. This view is also held by the rationalists. According to Malik, the months are Shawwal, Dhu-'l-Qa'dah, and Dhu-'l-Hijjah. According to al-Shafi'i, the night of the day of sacrifice which excludes the day itself marks the end of the months of hajj, i.e. Shawwal, Dhu- 'l qa'dah, and nine days of Dhu-'l-Hijjah. al-Mughni, vol.III, pp.275-276. Abu Ya'la, Sharh, p.120a (2770). See also note no.449.

456. Muhrim: is one who has entered into the state of temporary consecration (ihram) to perform the hajj or the umrah. El[2] under ihram.

457. See Qur'an:Surah 2:197; and for the interpretation of such words as lewdness, abuse and angry conversation. See al-Sijistani, Masa'il, p.99.

458. He was Abu Umayyah Shurayh bin al-Harith, a qadi of kufah and one of the great sons of the companions of the Prophet. He died around the year 87 A.H. Al-Shawish, Mukhtasar, p.56. Schacht, Introduction, p.24.

459. See al-Sijistani, Masa'il, p.100.

460. Two different reports have been related from Ibn Hanbal regarding the killing of lice. 1) It is forbidden. 2) It is permissible. al-Mughni, vol.III, pp.278-279.

461. This is according to the most widely known opinion of Ibn Hanbal. According to another report from him, the khuffs must be cut low below the anklebones otherwise the person is subjected to a penalty. This latter view is also held by Malik, al-Shafi'i and the rationalists. al-Mughni, vol.III, pp.281-282.

462. This view is also held by Abu Hanifah. According to Malik and al-Shafi'i, to throw on such a garment over the shoulder even without putting the hands into the sleeves subjects the person to a penalty. al-Mughni, vol.III, p.286. According to Ibn Hanbal, it is reprehensible to cover the head with a shade of the palanquin. al-Shafi'i, however, allows it. al-Mughni, vol.III, p.286.

463. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah it may be eaten by the muhrim. al-Mughni, vol.III, p.290.

464. al-Shafi'i also holds this view. Malik dislikes it, and Abu Hanifah forbids it. al-Mughni, vol.III, p.295.

465. al-Shafi'i also holds this view. According to Malik

and the rationalists it is lawful to eat such a food. al- Mughni, vol.III, p.297.

466. al-Shafi'i allows it. al-Mughni, vol.III, p.299.
467. al-Shafi'i allows the covering of the ears. al-Mughni, vol.III, p.299.
468. According to what is related from Ibn Hanbal, the muhrim may use kohl provided it is not meant for beautification. Malik also allows the use of kohl by the muhrim for the eye fever. al-Mughni, vol.III, p.302.
469. Malik also holds this view. Abu Hanifah allows that, and both views have also been attributed to al-Shafi'i. al-Mughni, vol.III, p.304.
470. See al-Sijistani, Masa'il, p.129.
471. This means the hajj is not rendered void by the repeated gaze resulting in the discharge of semen. This is also the view held by Abu Hanifah and al-Shafi'i. According to Malik, in such a case the hajj has to be performed again the following year. al-Mughni, vol.III, p.312.
472. This has been quoted only as part of the commentary. See al-Mughni, vol.III, p.313.
473. Ibn Qudamah's version of the Mukhtasar states. <If prevented by an enemy>. See al-Mughni, vol.III, p.326
474. This is also according to one of two opinions of al-Shafi'i. According to Abu Hanifah and Malik, there is no other alternative if a gift is unavailable or unattainable. al-Mughni, vol.III, p.330.
475. This view is also held by Malik and al-Shafi'i. According to another report from Ibn Hanbal which is also the view held by the rationalists, the muhrim may give up the ihram in this situation. al-Mughni, vol.III, p.331.
476. This view is also held by Abu Hanifah and al-Shafi'i. According to Malik, the person turns the hajj into 'umrah and may not proceed on with an invalid hajj. al- Mughni, vol.III, p.333.
477. The gate of Banu Shaybah is to-day called Bab al-Salam (Gate of peace). See al-Shawish, Mukhtasar, p.58; EI[2] under ka'ba.
478. This is also al-Shafi'i's view. According to Malik, hands are not raised upon sighting the Ka'bah. al-Mughni, vol.III, p.336.
479. The phrase "if it is there" is significantly mentioned here because, according to Ibn Kathir (d.774 A.H.) al- Khiraqi completed the writing of the Mukhtasar, at a time when the "Black Stone" had been taken away by the Carmathians. They took possession of the "Black Stone" in the year 317 A.H., and was not brought back to its actual place until the year 337 A.H., i.e. three years after the death of al-Khiraqi. See Ibn Kathir, al- Bidayah, vol.VI, p.214.

See also El[2] under al-Khiraki.

480. Ibn Qudamah explained this in the commentary. See al-Mughni, vol.III, p.338.

481. Idtiba': is to place the middle of the outer garment under one's right shoulder while throwing on the two ends over the left shoulder so that the right shoulder is exposed to view. al-Mughni, vol.III, p.339.

482. Ramal: signifies a certain kind of trotting pace between a walk and a run. Lane. Laoust, Precis, p.82.

483. Tawaf: is the walking seven times round the ka'bah. El[2] under Hadjdj.

484. This is according to the most widely known opinion of Ibn Hanbal. It is also the view held by Malik and al-Shafi'i. According to another report from Ibn Hanbal, which is also the view of Abu Hanifah, it is not conditional. al-Mughni, vol.III, p.343.

485. al-Rukn al-Yamani: is the forth corner of the ka'bah from the "Black Stone", the first corner. The second corner is known as al-Rukn al-Iraqi, and the third is al-Rukn al-Shami. For more detailed information on the structure of Ka'bah, its four corners and the immediate surroundings, see El[2] under Ka'ba. Note that al-Khiraqi allows the kissing of al-Rukn al-Yamani. Ibn Qudamah points out that, according to an authentic report from Ibn Hanbal, this corner should not be kissed. This latter view is held by most scholars including Abu Hanifah. al-Mughni, vol.III, p.344.

486. Hijr Isma'il: is the curved structure enclosed between the two corners of the Ka'bah: al-Iraqi and al-Shami. It is a space comprised by the curved wall called the Hatim which encompasses the ka'bah on the north or rather on the north-west side. Lane. See El[2] under ka'ba. See also Laoust, Precis, p.82.

487. Maqam: This is a little building with a small dome wherein is kept a stone bearing the prints of two human feet. Ibrahim the father of Isma'il, is said to have stood on this stone when building the Ka'bah and the marks of his feet were miraculously preserved. Hence this is called: Maqam Ibrahim. See El[2] under Ka'ba. See Qur'an:Surah 2:125.

488. Safa: is a little mountain outside the enclosure of the Great Mosque in Makkah from which point begins the ritual walk. El[2] under Ka'ba. See also note no. 491, and see Qur'an:Surah 2:158.

489. This has been explained by Ibn Qudamah only in the commentary. See al-Mughni, vol.III, p.349.

490. Marwah: is another little mountain outside the enclosure of the Great Mosque in Makkah at which point ends the ritual walk (sa'y). See El[2] under ka'ba. Laoust, Precis, p.83. See Qur'an:Surah 2:158,

see also next note.

491. Sa'y: is the act of traversing seven times, four times going and three times returning, the distance between Safa and Marwah. See El[2] under Hadjdj.

492. This is also the view held by most scholars including al-Shafi'i and the rationalists. According to Malik, the tawaf is continued and not stopped unless it is feared that this might cause problem at the time of performing the prayer. al-Mughni, vol.III, p.356.

493. This is according to one of two reports related from Ibn Hanbal. It is also the view held by Malik. According to the other report ritual purity must be performed again and then tawaf resumed from where the purity was lost. This latter view is also held by al-Shafi'i. al-Mughni, vol.III, p.357.

494. (D) The implication here is that it is unacceptable to carry a person who has no sickness. This is according to one report from Ibn Hanbal. It is also the view held by Abu Ya'la. According to a second report, it is acceptable but subject to a penalty of blood sacrifice. This view is held by Abu Hanifah and Malik. According to a third report, it is acceptable and there is no penalty. This latter view is held by Abu Bakr and al- Shafi'i. See Tabaqat, vol.III, pp.89-90. al-Mughni, vol.III, pp.358-359.

495. This view is also held by al-Shafi'i and the rationalists. According to other views, the talbiyah is brought to an end as soon as the sacred precincts of Makkah are entered, or as soon as the sky of Makkah is sighted. It is also related from Malik that it is brought to an end upon arrival at the sacred precincts if the ihram is assumed at the miqat; or brought to an end upon sighting the sacred House if ihram is assumed at the closest place to the sacred precincts of Makkah. al-Mughni, vol.III, p.361.

496. Day of tarwiyah: is the eighth day of the month of Dhu- 'l-Hijjah so called because the pilgrims on this day used to prepare to provide themselves with water for the day of 'Arafah. Some say it is so called because Abraham on this night saw in a dream the sacrificing of his son, and then began to reflect on whether it was a mere dream or a vision from Allah. Hence the name yawm al-tarwiyah (the day of reflection), but on the night of 'Arafah Abraham had the same dream again, and so he knew then that it was from Allah the Most Exalted, hence yawm 'Arafah (the day of 'Arafah) i.e. the day he knew what was seen as coming from Allah. al-Mughni, vol.III, pp.363-364.

497. Mina: is a place located in between Makkah and Muzdalifah wherein other pilgrimage rites take place such as the ritual blood sacrifice and the stoning of the devil. See El[2] under Hadjdj.

498. Related by al-Darimi under Kitab Manasik, bab no.46.

499. This implies that no sin is committed if the Adhan is omitted though it is better if pronounced. This is also the view held by al-Shafi'i and the rationalists. According to Malik, the pilgrim pronounces Adhan for each prayer. al-Mughni, vol.III, p.366.

500. This view is also held by Malik, al-Shafi'i, Abu Yusuf and al-Shaybani. Abu Hanifah holds the view that the prayers, if missed behind the imam, may not be combined by oneself alone. al-Mughni, vol.III, p.366.

501. 'Uranah: is a depression on the plain of 'Arafat, at the further edge of which is a mosque called by the names of Ibrahim or Namirah or 'Arafah. See El[2] under Arafa.

502. According to Ibn Qudamah, the imam here refers to the provincial governor (al-Wali) to whom is entrusted the hajj affair by the supreme leader of the Islamic community. See al-Mughni, vol.III, p.373.

503. Muzdalifah: is a location between Mina and 'Arafah. It is known by three names: 1) Muzdalifah 2) Jam' 3) al- Mash'ar al-Haram. al-Mughni, vol.III, p.376.

504. This has been included only in the commentary. al-Mughni, vol.III, p.373.

505. Mash'ar al-Haram: See note no.503. See also Qur'an:Surah 2:198.

506. Muhassar: is a place between Jam' (Muzdalifah) and Mina. al-Mughni, vol.III, p.378. According to the most authentic report from Ibn Hanbal, the pebbles may be picked up from any place desired. al-Mughni, vol.III, p.379.

507. This is according to one report from Ibn Hanbal. According to another report from him, it is not recommended to do so. Ibn Qudamah states that the latter report is authentic and that it is the view held by Malik and many scholars. al-Mughni, vol.III, p.380.

508. Jamrat al-'Aqabah: (Final Jamrah): refers to the third of the three heaps of pebbles in Mina, and each heap and that next to it being about a bow-shot apart. The other heaps are: Jamrat al-Ula (First Jamrah) and Jamrat al-Wusta (Middle Jamrah). The rites of stoning the devil are carried out at each of the three constructions. See El[2] under Hadjdj and under al- Djamra. See also Lane.

509. This tawaf is known as tawaf al-Ifadah, so called because the pilgrims on this day hasten onward from Mina to Makkah for the fulfillment of this obligation which is a basic element (rukn) of the hajj. See Qur'an:Surah 22:29. This tawaf is also known as tawaf al-Ziyarah, so called because the pilgrims hasten

onward from Mina to Makkah in order to visit the Sacred House and return to Mina without spending the night at Makkah. See al-Mughni, vol.III, pp.390-391. Note that there are three types of tawaf prescribed as far as hajj is concerned. 1) Tawaf al-Ziyarah (Tawaf of visit) which is a basic element (rukn). 2) Tawaf al- Qudum (Tawaf of arrival) which is sunnah, the omission of which requires no penalty. 3) Tawaf al- Wada' (Farewell tawaf) which is obligatory, the omission of which requires an offer of a blood sacrifice. This is also the view held by Abu Hanifah. According to Malik omission of tawaf al-Qudum requires an offer of a blood sacrifice, but nothing is required for omitting tawaf al-Wada'. According to one report from al-Shafi'i, the omission of tawaf al-Wada' requires an offer of a blood sacrifice. According to another report its omission is the same as for tawaf al-Qudum, nothing is required. All other tawafs besides those mentioned here are supererogatory (nafl). al- Mughni, vol.III, p.393 & p.404; M.W.S.K., vol. III, p.469.

510. This tawaf in particular is, according to Ibn Qudamah, known as tawaf al-Qudum (tawaf of arrival) which, according to a report from Ibn Hanbal, is sunnah. Ibn Qudamah points out that Ibn Hanbal holds the view that tawaf al-Qudum is prescribed and cannot be replaced by the performing of tawaf al-Ziyarah. Ibn Qudamah adds that he knows none supportive of Ibn Hanbal's opinion regarding this tawaf. To Ibn Qudamah one tawaf i.e. tawaf al-Ziyarah is valid enough. Hence, he concludes that tawaf al-Qudum is not obligatory; what is obligatory is tawaf al-Ziyarah for the mutumatti', qarin, and the mufrid, and which is also a basic element of the hajj without which the hajj is incomplete. al-Mughni, vol.III, pp.392-393.

511. Qur'an:Surah 22:29.

512. Apparently it is obligatory to spend the nights of Mina in Mina. This is according to one report from Ibn Hanbal which is also the view held by Malik and al- Shafi'i. According to another report from Ibn Hanbal, it is not obligatory to do so. Ibn Qudamah points out that the first report is more authentic. See al-Mughni, vol.III, p.397.

513. See Qur'an:Surah 2:203.

514. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah, the pilgrim may leave until the appearance of the dawn of the third day. al-Mughni, vol.III, p.401.

515. i.e. Masjid al-Khayf (al-Khayf Mosque).

516. This is also the view held by Malik and al-Shafi'i. According to the rationalists, it is not necessary to repeat the farewell tawaf if it has already been

performed, or if a voluntary tawaf has been performed when the pilgrim could lawfully leave Mina, regardless of how much time is spent in Makkah thereafter. al- Mughni, vol.III, p.405.

517. This view is also held by al-Shafi'i. According to Ibn Qudamah, Ibn Hanbal's description of a pilgrim close at hand is one who is close to Makkah from a distance less than that which prayer may be shortened, while the distant pilgrim is one who is at a distance for which prayer may be shortened. This is according to another view held by al-Shafi'i. al-Mughni, vol.III, p.405.

518. (D) This view is also held by Malik and al-Shafi'i It is based on one report from Ibn Hanbal. Hence it is enough to perform one tawaf and one Sa'y for both the hajj and 'umrah. According to another report from Ibn Hanbal, which is also the view held by Abu Hanifah, two tawafs and two sa'ys are required. According to still another report from Ibn Hanbal, a separate 'umrah with a separate ihram, beside the one combined with the hajj, is required. This latter view is held by Abu Bakr. Tabaqat, vol.II, pp.90-91. al-Mughni, vol.III, pp.409-410.

519. See Qur'an:Surah 2:196.

520. These are the days of tashriq. See note no.278.

521. See section 6.1.

522. See note no.420. See section 6.1. See also al-Mughni, vol.III, p.419.

523. This is also the view held by Malik, al-Shafi'i and many other scholars. According to Abu Hanifah, in such a situation she may decline the 'umrah and take on hajj. al-Mughni, vol.III, p.421; M.W.S.K., vol.III, p.510.

524. Tan'im: is considered the closest place to Makkah wherein ihram may be assumed by a person intending to perform 'umrah. See note no.444.

525. Obviously, al-Khiraqi allows only shepherds to delay the ritual stoning of the devil until the next stoning, probably basing this view on a report from Ibn Hanbal. According to al-Shafi'i, Abu Yusuf and al- Shaybani, there is no penalty for non-shepherds delay of the stoning until the night of the day of sacrifice or the following day. See Ibn Rushd, Bidayah, vol.I, p.351. Ibn Qudamah believes that other pilgrims with similar excuses as the shepherds such as water- suppliers, the sick and so on may omit spending the night at Mina and may also delay the stoning of the devil in the same manner as the shepherds. al-Mughni, vol.III, p.427.

526. Fidyah: payment against a penalty by fasting or giving alms or offering a blood sacrifice such as if a person shaves his head due to sickness or an

ailment of the head. See Qur'an:Surah 2:196.

527. According to another report from Ibn Hanbal, the cutting of three pieces of hair requires payment of fidyah. al-Mughni, vol.III, p.430.

528. This is also the position of al-Shafi'i. According to Abu Hanifah, an offer of a blood sacrifice is unnecessary unless a whole limb has been perfumed or what is worn has been for a day and a night. al-Mughni, vol.III, p.434.

529. i.e. if the pilgrim does not stay on until sunset, then an offer of a blood sacrifice is required. According to al-Shafi'i, an offer of a blood sacrifice is not required if the pilgrim leaves before sunset. M.W.S.K., vol.III, p.529.

530. Ibn Qudamah points out that the Hanbali school strongly upholds this view though, according to another report from Ibn Hanbal, nothing is required on a pilgrim who leaves without spending the entire night at Muzdalifah. al-Mughni, vol.III, p.437.

531. This is according to one of two reports related from Ibn Hanbal. It is also the view held by Malik, al-Shafi'i and the rationalists. According to the other report, there is no penalty for killing land-game by mistake. al-Mughni, vol.III, pp.438-439.

532. This is according to one of three reports from Ibn Hanbal which is also the view held by Malik, al-Shafi'i and the rationalists. According to a second report, it is not optional, it is paid in equivalency, then by feeding and then by fasting. According to a third report, feeding is not included. al-Mughni, vol.III, p.448.

533. This is according to one of three reports from Ibn Hanbal which is the view held by the rationalists. 2) The Muhrim is penalized for the first time only. 3) If the first penalty has been satisfied then the second penalty is binding on the muhrim otherwise only the first penalty is binding. al-Mughni, vol.III, p.451.

534. This is according to one of three reports from Ibn Hanbal which is the view held by al-Shafi'i. 2) Each one of the group pays for himself. This view is held by Abu Hanifah and Malik. 3) Unless it is paid by fasting, one payment of fidyah is required for all. al-Mughni, vol.III, pp.451-452.

535. According to Malik, except the muhrim himself and the animal driver, all those in the company of the muhrim may eat from it. al-Mughni, vol.III, p.462.

536. Apparently there is a misprint here in al-Shawish's version. See Mukhtasar, p.63.

537. al-Shafi'i holds the view that it is not acceptable for a person who shaves the head due to an ailment to present the offering except to the needy persons of

the sacred precincts of Makkah. al-Mughni, vol.III, p.468.

538. This view is also held by Malik, al-Shafi'i, and the rationalists. Sheep without incisors are six months old. Goats with incisors are those which are a year old, cows two years, and camels five years old. According to another opinion, only goats with incisors are valid from each kind. According to still another opinion. Sheep without incisors are valid from any kind except goats. al-Muhgni, vol.III, p.474.

539. This also is the position of al-Shafi'i. According to Malik and the rationalists the contract is binding if there is an offer of contract and acceptance, but each seller and buyer has no option (Khiyar) of canceling or confirming the bargain. al-Mughni, vol.III, p.482.

540. Malik's position is that it is permissible for more than three nights and days as needed. According to Abu Hanifah and al-Shafi'i, it is not permissible for more than three nights and days. al-Mughni, vol.III, p.499.

541. There are four different reports concerning bartering on a credit basis in those things that can not be measured or weighed. 1) it is not forbidden. This is the view of al-Shafi'i. 2) It is only forbidden in every wealth exchanged for its same kind. This is the view of Abu Hanifah. 3) It is only forbidden in what is exchanged for its same kind on a quantitative disparity. 4) It is forbidden in every wealth exchanged for another whether of its same kind or otherwise. al- Mughni, vol.IV, pp.10-11.

542. This is also the view held by Malik and al-Shafi'i and also Abu Yusuf and al-Shaybani. According to Abu Hanifah, it is permissible. al-Mughni, vol.IV, p.12. 'Araya: sing. 'Ariyyah, i.e. a palm-tree which its owner assigns to a needy person to eat its fruit during a year. 'Araya sale was permitted because a needy man attaining to the season of fresh ripe dates, and having no money with which to buy them for his household, nor any palm-trees from which to feed them, but having some dried dates remaining of his food, would come to the owner of palm-trees, and ask him to sell him the fruit of a palm tree or of two palm-trees, and would give those remaining dried dates for that fruit, hence it was allowed in respect of that fruit if less then five wusuq. Laoust, Precis, p.96. See also Lane.

543. This view is also held by al-Shafi'i and the rationalists. According to another report from Ibn Hanbal, they belong to the same species. This latter view is held by Malik. M.W.S.K., vol.IV, pp.139-140.

544. (D) This is also according to one of two opinions of al-Shafi'i. According to another report which is the view held by Abu Bakr, Abu Ya'la, and Abu Hanifah, meats are of different species. According to a third report which is the view held by Malik, they are of four different species: meat of grazing live stock, meat of wild animals, meat of birds, and meat of sea animals. Hence it is permissible to exchange one species for another on a quantitative disparity and not on the basis of equal weight. See Tabaqat, vol.II, p.91. al-Mughni, vol.IV, pp.23-24.

545. Ibn Qudamah's text reads: <It is permissible>. Ibn Qudamah points out in his commentary that al-Khiraqi prefers the exchange of one meat for another only in the condition of complete dryness. See al-Mughni, vol.IV, P.24. This probably is an indication that the statement "It is not permissible" is a misprint. Also, Ibn Ya'la's quotation of this case agrees with the text of Ibn Qudamah. See Tabaqat, vol.II, p.91.

546. There is no disagreement in the Hanbali school that such an exchange is not permissible if it relates to an animal of the same species as that of the meat. This is also the view held by Malik and al-Shafi'i. According to Abu Hanifah, it is absolutely not permissible. al- Mughni, vol.IV, p.27.

547. Ibn Qudamah mentions in his commentary the other state of the defect as stated in al-Shawish's edition, which suggests that there are two different states of such a defect. al-Mughni, vol.IV, p.33.

548. (D) This view is also held by al-Khallal, and Abu Yusuf and al-Shaybani. It is also according to one of two opinions of al-Shafi'i. According to Abu Bakr, which is also the view of Abu Hanifah and according to the second opinion of al-Shafi'i, the purchaser is not entitled to an exchange. Tabaqat, vol.II, pp.91-92. Ibn Qudamah, al-Mughni, vol.IV, pp.35-37.

549. Permissibility of 'Araya sale is the view held by most scholars including Malik and al-Shafi'i. According to Abu Hanifah, its sale is not permissible. al-Mughni, vol.IV, p.45.

550. According to al-Shafi'i, it is not rendered void. Another report from Ibn Hanbal expresses similar view. al-Mughni, vol.IV, p.50.

551. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah, the fruit goes to the seller whether the date palm is pollinated or not. According to Ibn Abi Layla (d.148/765), it goes to the buyer in both cases. al-Mughni, vol.IV, p.51.

552. This is based on one report from Ibn Hanbal. According to another report, it is valid. al-Mughni, vol.IV, pp.65-66.

553. Malik and al-Shafi'i hold this view as well.

According to Abu Hanifah, it is not acceptable on the condition that it may be left until ready to pluck. M.W.S.K., vol.IV, p.204.

554. Abu Hanifah and al-Shafi'i hold this view as well. According to Malik, it is permissible to sell all of these. al-Mughni, vol.IV, p.70.

555. There are differences of opinion in the Hanbali school regarding the validity of the contract if the harvest is made conditional upon the seller; and so are differences of opinion in the al-Shafi'i school regarding same. al-Mughni, vol.IV, p.72.

556. al-Shafi'i and the rationalists hold this view. According to Malik, it is permissible to make such a reservation. al-Mughni, vol.IV, p.77.

557. This is also Malik's view and an old opinion of al-Shafi'i. According to Abu Hanifah and a later opinion of al-Shafi'i, liability is on the buyer. al-Mughni, vol.IV, p.80.

558. According to Abu Hanifah, liability to every object of sale except a piece of real estate, is on the seller if it becomes exhausted before it is received by the buyer. According to al-Shafi'i, the seller is liable to whatever is sold until it is received by the buyer. al- Mughni, vol.IV, p.84.

559. This view is also held by Abu Hanifah and al-Shafi'i. According to Malik, all of these transactions are allowed in relation to food before it is received. al- Mughni, vol.IV, p.89.

560. (D) al-Shafi'i also holds this view. Revocation of sale, according to Abu Bakr, is considered as a complete bargain. This latter view is also held by Malik. Tabaqat, vol.II, p.92. al-Mughni, vol.IV, p.92.

561. See Ibn Qudamah, al-Muqni', vol.II, pp.63-64. Hence, according to this report on which is based Abu Bakr's view, revocation of sale is prohibited when the call is pronounced for Friday congregational prayer (Jumu'ah) since bargaining is forbidden at this time. See Qur'an: Surah 62:9.

562. Ibn Qudamah points out that Ibn Hanbal has mentioned this at other places. According to Malik, it is reprehensible to do so. There is a report from Ibn Hanbal that it is only reprehensible. According to Abu Hanifah and al-Shafi'i, it is acceptable to do so. al- Mughni, vol.IV, p.95.

563. This view is also held by Malik, al-Shafi'i, Abu Yusuf and al-Shaybani. According to Abu Hanifah, this transaction is valid if it relates to only one qafiz (a dry measure) but not with anything else. al-Mughni, vol.IV, p.97.

564. This view is also held by Malik, al-Shafi'i and Abu Yusuf. According to Abu Hanifah and al-Shaybani, the

purchaser in this case has no option because this is not a defect. al-Mughni, vol.IV, pp.102-103.

565. al-Shafi'i also holds this view. But according to Malik and some al-Shafi'i scholars, one Sa' of the major food in the country is required. Abu Yusuf holds the view that the equivalent value of the milk is what is returned. al-Mughni, vol.IV, p.104.

566. (D) This view is also held by Malik. According to another report from Ibn Hanbal, which is the view held by Abu Bakr and Abu Hanifah, she cannot be returned after having had sexual intercourse with her whether she was virgin or not virgin. According to al-Shafi'i, she cannot be returned if she was a virgin. Tabaqat, vol.II, pp.92-93; al-Mughni, vol.IV, pp.110-112.

567. al-Shafi'i also holds this view. According to Abu Hanifah, it may not be returned unless the purchase has been canceled by the judge (Hakim). al-Mughni, vol.IV, p.120.

568. (D) According to another report from Ibn Hanbal, which is the view held by Abu Bakr, Abu Hanifah and al- Shafi'i, the buyer is entitled to the amount fallen short due to the defect, but it may be returned. Tabaqat, vol.II, p.93. According to Malik, if the defect of what is purchased can only be found out after opening it, then nothing may be returned to the seller afterwards. al-Mughni, vol.IV, pp.126-127.

569. The following reports are related from Ibn Hanbal regarding the seller's responsibility for defects. 1) The seller is acquitted only if the buyer is aware of the defect. This is one opinion of al-Shafi'i. 2) The seller is acquitted only if unaware of the defects. This is an opinion of Malik and another opinion of al- Shafi'i in regard to the sale of animals specifically. 3) The seller is acquitted of what is not known about whether it relates to animals or not. This is the opinion of the rationalists and another opinion again of al-Shafi'i. al-Mughni, vol.IV, p.135.

570. This view is also held by Malik and the rationalists. al-Shafi'i permits it. See al-Mughni, vol.IV, p.132.

571. Sale with a specification of gain (bay' al-Murabahah) is when an object is sold at its cost price to another person while quoting a specific profit on it. This sale is permissible, according to Ibn Qudamah. See M.W.S.K., vol.IV, p.259.

572. This is based on one of three reports from Ibn Hanbal. The other reports are: 1) If known to be reliable the seller's word is accepted. 2) The seller's word is not accepted even with a proof unless believed by the buyer. This is also an opinion of al-Shafi'i. al- Mughni, vol.IV, p.142.

573. According to another report from Malik, the buyer's word is taken corroborated by his oath. al-Mughni, vol.IV, p.144.

574. This view is also held by al-Shafi'i. According to Abu Hanifah, the first to take the oath is the buyer. al- Mughni, vol.IV, pp.144-145.

575. (D) This is also according to an opinion of al-Shafi'i and one of two reports from Malik. According to another report which is basically the view held by Abu Bakr and Abu Hanifah, the buyer's word is taken corroborated by his oath. Tabaqat, vol.II, pp.93-94. al-Mughni, vol.IV, p.146.

576. Mulamasah: aleatory transaction and a pre-Islamic custom. It is a mode of bargaining which consists in saying: When you feel or touch my garment the thing to be sold, or I feel or touch your garment or the thing to be sold, the sale is binding between us for such a sum. Lane. Laoust, Precis, p.94; Schacht, Introduction, p.147.

577. Munabadhah: aleatory transaction and a pre-Islamic custom. A mode of bargaining consisting in saying: Throw me the garment or other article of merchandise, or I will throw it to you and the sale shall become binding for such a sum. Lane. Laoust, Precis, p.94. Schacht, Introduction, p.147.

578. al-Shafi'i and the rationalists also hold the view that it is not permissible to sell milk in the udder. According to what is related from Malik, it is permissible for a certain known number of days provided they both know the animal is capable of producing the milk to feed the child. al-Mughni, vol.IV, p.157.

579. This view is also held by Abu Hanifah and al-Shafi'i. According to what is related from Malik, it is permissible. al-Mughni, vol.IV, p.159.

580. Najsh or Najash: is to bargain with a person desiring to sell a thing, offering the person a large price, or praising it in order that another might fall into a snare, the bargainer himself not wanting the thing. Lane. Laoust, Precis, p.95.

581. Ibn Qudamah's commentary work contains the words: <and informs him of the price and says>. See al-Mughni, vol. IV, p.162; M.W.S.K., vol.IV, p.279.

582. According to a response to a question put to Ibn Hanbal, the sale is valid. This view is held by Abu Hanifah and his followers. Ibn Qudamah mentions three conditions, based on al-Khiraqi's statement, on which this sale is forbidden. 1) If the town dweller approaches the non-town dweller to sell on the latter's behalf. 2) If the cost price is unknown to the non-town dweller. 3) If the non-town dweller brings the goods for sale. According to al-Shafi'i

scholars, four conditions render the sale forbidden, the above mentioned three conditions in addition to the condition that if the sale is intended for the price of the day. al-Mughni, vol.IV, p.163.

583. See Muslim, Kitab Buyu', hadith no.20; Abu Dawud, Kitab Buyu', bab no.45; al-Tirmidhi, Kitab Buyu', bab no.13; Ibn Hanbal, vol.3, p.307. Note that the statement: "and this is, when a town dweller... through others" has been quoted only as part of the commentary. See al-Mughni, vol.IV, p.162.

584. See al-Bukhari, Kitab Buyu', bab no.68; Muslim, Kitab Buyu', hadith no.11; Abu Dawud, Kitab Buyu', bab no.46; Muwatta', Kitab Buyu', hadith no.96; Ibn Hanbal, vol.I, p.368.

585. According to the rationalists, they have no option. al-Mughni, vol.IV, p.165.

586. This has been quoted only as part of the commentary. al-Mughni, vol.IV, pp.164-165.

587. It is related from Ibn Hanbal that stipulations which are forbidden are those that are valid but which are not in the interest of the contract, such as buying a piece of cloth on condition that the seller sews it and also bleaches it, or buying some food on condition that it be ground and also carried. One stipulation from the above is acceptable but two stipulations render the bargain invalid. According to another report from Ibn Hanbal, forbidden stipulations are those that are invalid, such as buying a female slave on condition that she will not be sold to another person and also sexual relations will not be had with her. Hence Ibn Hanbal's words, on the whole, have been interpreted to mean that if two stipulations are made whether valid or invalid and whether or not in the interest of the contract, they render the bargain invalid. al-Mughni, vol.IV, pp.169-170.

588. This view is also held by Abu Hanifah and al-Shafi'i and most scholars. Malik believes that it is effective. al-Mughni, vol.IV, p.176.

589. This is also the view held by al-Shafi'i. Abu Hanifah allows the sale of any dog. According to another report from Abu Hanifah, it is not permissible to sell vicious dogs. Some Malikis disallow the sale of dogs. Others allow the sale of hunting dogs and others consider its sale as reprehensible (makruh). al-Mughni, vol.IV, p.189.

590. This view is also held by al-Shafi'i. According to Malik, the killer must pay a fine. al-Mughni, vol.IV, p.190.

591. (D) al-Shafi'i also holds this view. On the contrary, Abu Bakr believes that it is not permissible to sell the lynx and the hawk and their like. Tabaqat,

vol.II, p.94. al-Mughni, vol.IV, p.193.

592. Salam: is the contract for a future delivery with prepayment. Schacht, Introduction, p.106, p.119.

593. Salam is therefore ineffective with immediate delivery. This is also the view held by Abu Hanifah and Malik. According to al-Shafi'i, salam is permissible with immediate delivery. al-Mughni, vol.IV, p.218.

594. This view is also held by Abu Hanifah and al-Shafi'i. According to Malik, it is permissible to wait two or more days later to receive the price provided it is not as such stipulated. al-Mughni, vol.IV, p.223.

595. This is the opinion of most scholars. According to what is related from Malik it is permissible to engage in partnership in such a situation and also to resell the object of salam at a cost price. al-Mughni, vol.IV, p.227.

596. According to Malik, it is permissible. There are two opposing opinions for al-Shafi'i, that it is either permissible or not permissible. al-Mughni, vol.IV, p.229.

597. Malik also holds the view. According to al-Shafi'i, there are two opposing opinions related to the sale of one object of salam on the condition that delivery is made at two different times that it is either valid or invalid. al-Mughni, vol.IV, p.230.

598. (D) This is based on one report. According to another report, it is permissible. This is the view held by Abu Bakr. Also, Malik, al-Shafi'i and the rationalists hold the view that it is allowed. Tabaqat, vol.II, pp.95-96. al-Mughni, vol.IV, p.232.

599. This case pertains to the pawner whether or not he is financially capable. This view is also held by the rationalists and it is according to one of three opinions of al-Shafi'i, except that Abu Hanifah holds that in the case of a person who is not financially capable, the emancipated slave may pay back his value by working. According to another report from Ibn Hanbal, the slave is not free if the pawner is not financially capable. This is Malik's view, and it is also according to a second opinion of al-Shafi'i. According to a third opinion of al-Shafi'i, the slave is not free whether or not the pawner is financially capable. al-Mughni, vol.IV, p.271.

600. According to Abu Hanifah, Malik and al-Shafi'i, the pawnee is not allowed to take advantage whatsoever of the pledge. al-Mughni, vol.IV, p.290.

601. According to the rationalists, the increase directly from the original pledge is considered part of the deposited security but not what is earned on it. According to Malik, only the child is considered part of the pledge in the case of an increase in the

original pledge. al-Shafi'i holds the view that the increase directly from the original pledge or what is earned on it is not considered part of the deposited security. al-Mughni, vol.IV, pp.291-292.

602. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah, house rent and maintenance are the responsibilities of the pawnee. al-Mughni, vol.IV, p.294.

603. al-Shafi'i also holds this view. Malik holds the view that there is no payment if the exhaustion is due to an external reality such as death or fire, but payment is required if it is due to a hidden cause. According to the rationalists, the pawnee must pay the lesser of the two values or the value of the debt. al-Mughni, vol.IV, p.297.

604. al-Shafi'i and the rationalists also hold this view. According to another opinion which is similar to Malik's view, the pawnee's word is what is taken. al-Mughni, vol.IV, p.299.

605. This view is also held by Malik and al-Shafi'i. Abu Hanifah holds the view that the person is treated the same as other creditors. al-Mughni,vol.IV, p.307. The following five conditions entitle the seller of the property to the property. 1) The property must be available in the same condition as sold to the person declared bankrupt. 2) The increase, if any, must not be inseparable from the original property. 3) The seller must not have received part of the price of the property. 4) The property must have nothing to do with another person's right. 5) The person declared bankrupt must be alive. M.W.S.K., vol.IV, pp.460-483. al-Mughni, vol.IV, pp.310-32

606. There are two dots marked in between the words: (If any right is due to a person) and the words: (before the judge declares him legally incompetent is considered valid), indicating that some words are missing here. Hence, I have enclosed the missing words in brackets in the translation, which are based on a similar statement contained in Ibn Qudamah's version of the Mukhtasar, namely: "Anything done with the property by the bankrupt person before the judge declares him legally incompetent is considered valid". See al-Mughni, vol.IV, p.328.

607. This, according to Ibn Qudamah, is based on one report from Ibn Hanbal. According to another report, it becomes lawful. This view is held by Malik. Two opposing views are attributed to al-Shafi'i, either it becomes lawful or it does not become lawful. al-Mughni, vol.IV, p.326.

608. There are two reports on this case: either it does not become lawful or it becomes lawful. This latter view is held by Malik, al-Shafi'i and the

rationalists. al- Mughni, vol.IV, p.327.

609. Malik and al-Shafi'i also believe in the detaining of a person who claims to be in financial difficulty. According to Malik, there is no hearing of evidence on financial difficulty. al-Mughni, vol.IV, p.339.

610. Malik also holds this view. According to al-Shafi'i, in this situation, anyone who finds his property sold to the deceased bankrupt person may take it back. al-Mughni, vol.IV, p.341.

611. This is probably based on a report from Ibn Hanbal. According to al-Shafi'i, the person is not held from travelling whether the right is due before or after the travelling period, and whether the journey is for legal war (Jihad) or not. al-Mughni, vol.IV, p.342.

612. Ibn Qudamah points out that two people may be declared legally incompetent: 1) A person may be declared legally incompetent to handle his own property. 2) A person may be declared legally incompetent because of what is due to other people, such as a person declared bankrupt for what is due to his creditors. As for those who may be declared legally incompetent to handle their own property, they are three, namely: 1) A child. 2) The insane. 3) A person who is mentally deficient. (safih). Hence, this chapter here pertains particularly to these three people. See al-Mughni, vol.IV, p.343.

613. (D) This view is also held by Abu Hanifah and al-Shafi'i. According to Abu Bakr, the wealth of a slave girl may not be delivered over to her until she has a child. This latter view is also held by Abu Ya'la, and it is also based on a report from Ibn Hanbal. Tabaqat, vol.II, pp.94-95. According to Malik the wealth of a slave girl may not be delivered over to her until she has married and the marriage consummated. al-Mughni, vol.IV, pp.347-348.

614. Abu Hanifah and Malik also hold this view. According to al-Shafi'i, sound judgment is determined by the competence to handle the wealth as well as by religious righteousness. al-Mughni, vol.IV, p.350.

615. al-Khiraqi's statement here implies that the debt does not become binding only at the time the person is declared legally incompetent, but it does become binding after the person has been declared legally competent. al-Shafi'i holds the view that the debt does not become binding even after the person has become legally competent. al-Mughni, vol.IV, pp.356-357.

616. Ibn Qudamah defines peaceful settlement as an agreement through which settlement is reached between two disputing parties. It is of various kinds, such as peaceful settlement between the Muslims and the non-Muslims in the enemy territory (Ahl al-harb),

between non-transgressors (Ahl al-'Adl) and the transgressors (Ahl al-Baghy), and between a married couple if a breach is feared between them. Ibn Qudamah points out that this chapter here pertains to the making of peaceful settlement between two disputing parties in relation to property. This is of two kinds, namely: peaceful settlement on the basis of acknowledging original obligation (sulh 'ala iqrar), and peaceful settlement on the basis of not acknowledging original obligation (sulh 'ala inkar). For al-Khiraqi, he calls it peaceful settlement only when the original obligation is not acknowledged. al-Mughni, vol.IV, p.357.

617. To make a peaceful settlement though the original obligation may not be acknowledged by the debtor is considered valid. This view is held by Abu Hanifah and Malik. According to al-Shafi'i, it is invalid. al-Mughni, vol.IV, p.357.

618. This indicates that al-Khiraqi considers it a peaceful settlement only when the original obligation is not acknowledged, but not when it is acknowledged. See note no. 616.

619. This view is also held by Abu Hanifah and al-Shafi'i. According to another opinion by Abu Thawr (d.240/854) no attention is paid to the claim of that person. al-Mughni, vol.IV, p.380.

620. Hence, according to the Hanbali school, it becomes obligatory on both the transferee and the person transferred to, to accept the transference without the need for their consent to it. According to Abu Hanifah, their consent is required. According to Malik the transferee's consent is needed but not that of the person transferred to unless the transferee is an enemy. According to al-Shafi'i, the transferee's consent is needed but regarding the person transferred to he has two opposing views that either his consent is needed or it is not needed. al-Mughni, vol.IV, pp.394-395.

621. al-Shafi'i and the rationalists hold the view that unless the guarantor has paid the debt the person guaranteed for is not cleared from it. According to another opinion held by Abu Thawr, the person is cleared from debt just by the guarantor's word. See al-Mughni, vol.IV, p.408. Note that according to Abu Hanifah and al-Shafi'i, if the person for whom bail is given dies, the bailsman is cleared from responsibility. According to Malik, the bailsman becomes liable to what is due on the deceased. al-Mughni, vol.IV, pp.420-421.

622. Sharikat al-Abdan: co-partnership in bodily labours for the acquirement of gains. i.e. an agreement between two or more partners to enter into a business

partnership for the joint pursuit of a trade or of connected trades without capital. al-Mughni, vol.V, p.4. Schacht, Introduction, p.156. Laoust, Precis, p.109. Ibn Qudamah points out that Ibn Hanbal allows the entering into partnership for the joint pursuit in fishing, loading and delivery. This is also the view held by Malik. According to Abu Hanifah, it is acceptable only for the joint pursuit of a trade. al-Shafi'i holds the view that such a partnership of joint pursuit without capital (sharikat al-Abdan) is invalid whether it relates to a joint pursuit of a trade or otherwise because it is a partnership involving no capital. al-Mughni, vol.V, pp.4-5.

623. This is a kind of partnership known as Mudarabah (sleeping partnership) which consists of fiduciary relationship (amanah) and a procuration (wakalah), and becomes a partnership only as far as the profit is concerned. As far as the loss is concerned the sleeping partner (rabb al-Mal) bears it. Schacht, Introduction, p.156. al-Mughni, vol.V, p.11. Laoust, Precis, p.109.

624. This partnership is the credit co-operative (sharikat al-Wujuh) without capital. It consists of pooling the credit of the partners for buying goods on credit, reselling them and sharing the profit. Laoust, Precis, p.109. Schacht, Introduction, p.156. al-Mughni, vol.V, p.11.

625. These two kinds of partnership fall under mudarabah (sleeping partnership). See al-Mughni, vol.V, p.11.

626. This is the limited liability company (Sharikat al-'Inan) which amounts to a mutual procuration, hence each partner is responsible to third persons for his own transactions, and has the right of recourse against the other partner to the amount of his share. This kind of partnership does not only engage the capital which has been brought in but can also be restricted to certain kinds of transactions. The shares of the partners may be different, and their shares in the profit may also differ from their shares in the capital if unequal amount of work is done by both of them. Schacht, Introduction, p.156. Laoust, Precis, p.109. al-Mughni, vol.V, pp.11-12.

627. This view is also held by Malik and al-Sbafi'i. M.W.S.K., vol.V, p.150.

628. This is Abu Hanifah's view and what is most preferable to Ibn 'Aqil. M.W.S.K., vol.V, p.150.

629. Ibn Qudamah mentions that most jurists permit it. al-Mughni, vol.V, p.37.

630. Wakil: The procurator, deputy, agent, proxy as far as legal affairs are concerned. Muwakkil: The principal who confers powers of disposal (wakalah) on another person. Schacht, Introduction, p.120.

631. This view is also held by Malik, al-Shafi'i, Abu Yusuf and al-Shaybani. According to Abu Hanifah, the opponent has the right to refuse the wakil's demand if the muwakkil is present. al-Mughni, vol.V, p.65. This is according to one of two reports from the Hanbali school. It is also the view held by al-Shafi'i and the rationalists. Hence according to this view the guardian appointed by testament (wasi) cannot as well buy himself anything out of the orphan's wealth. According to what is related from Malik, it is permissible in both cases. al-Mughni, vol.V, p.84.

632. This is according to an authentic report from the Hanbali school. It is also the view held by al-Shafi'i. However, according to another report from the school, the purchase is valid but subject to the approval of the owner of the wealth (al-Malik). al-Mughni, vol.V, p.94.

633. (D) Abu Bakr holds the view that it is not permissible to except silver from gold or gold from silver. Tabaqat, vol.II, p.95. According to Malik and al-Shafi'i, it is valid to make an exception absolutely from other than what is acknowledged. According to Abu Hanifah it is permissible if what is excepted is measurable or can be weighed, but to except such as a slave or a piece of cloth from what can be measured or weighed is not permissible. al-Mughni, vol.V, pp.112-113.

634. This is according to one of two reports mentioned by Ibn Qudamah on this case. According to the other report which is also the view held by Abu Hanifah, it is an acknowledgement except that the person must present proof of payment. al-Mughni, vol.V, p.118.

635. These are light weight or reduced dirhams (al-darahim al-Naqisah) such as Tabari dirhams with each dirham weighing four danaqs. al-Mughni, vol.V, p.122. See also note no.313.

636. These are heavy weight or full weight dirhams (al-darahim al-Wafiyah) each weighing eight danaqs and called 'Abdiyyah or Baghliyyah. See note no.313.

637. (D) Obviously al-Khiraqi permits the exception of one half but not more than one half. Abu Bakr holds the view that exception of one half is unacceptable. Tabaqat, vol.II, p.95. al-Mughni, vol.V, p.130.

638. Note that in the first example, the phrase: "as a trust" is a proper explanation consistent with what is acknowledged, because the expression: "He has ten dirhams with me" is indicative of acknowledgement of a trust, hence the person's word is accepted. But in the second example, the phrase "as a trust" is not consistent with what is acknowledged here, i.e. the acknowledgement of a debt. Hence the person's word

here is not accepted. In the third example, the phrase "as a trust" is again consistent with what is acknowledged, and because the acknowledgement is in favor of the pawn owner, his word is accepted. See M.W.S.K., vol.V, pp.308-309; p.320.

639. This is the opinion of most scholars. According to al- Shafi'i, the acknowledger shares nothing with the person acknowledged. al-Mughni, vol.V, p.145. This view is also held by Abu Hanifah and his followers. al-Shafi'i has two opposing views either it can be accepted or not accepted. According to Malik, the acknowledgement is acceptable if the acknowledger is not distrustful and unacceptable if distrustful. al-Mughni, vol.V, p.158.

640. al-Shafi'i also holds this view. According to Abu Hanifah and Malik, it is considered a trust for which there is no liability unless transgression has been committed. al-Mughni, vol.V, p.164.

641. This is also the view held by al-Shafi'i. Abu Hanifah and Malik hold the view that it is obligatory on the usurper to pay the increase. al-Mughni, vol.V, p.192.

642. hadd: is a fixed punishment for certain crimes. Here it refers to the crime of committing unlawful intercourse (zina). See El[2] under hadd.

643. (D) Abu Bakr holds the view that the returning of an equivalent dowry of someone alike is not required. This is also the view held by Abu Hanifah. Tabaqat, vol.II, pp.96-97. al-Mughni, vol.V, p.202.

644. (D) This is according to one of three reports related on this case. 2) They are redeemed either by giving back equal number of slaves alike or by paying an equivalent value of what they are worth. This view is held by Abu Bakr. 3) They are redeemed by paying the equivalent value of what they are worth. This view is held by Abu Hanifah and al-Shafi'i. Tabaqat, vol.II, p.96. al-Mughni, vol.V, p.201.

645. This is the view held by al-Shafi'i. According to Abu Hanifah and Malik, the owner of the usurped object is given the option to either wait for the usurper to return the object or to demand its payment. al-Mughni, vol.V, pp.205-206. See also El[2] under ghasb. al-Shafi'i also holds this view. According to Abu Hanifah and Malik, no payment is required for the dead child. al-Mughni, vol.V, p.207.

646. al-Shafi'i also holds the view that there is no liability for the destroying of wine or swine. According to Abu Hanifah and Malik there is a liability for destroying them. Abu Hanifah explains that in such a case a Muslim pays their equivalent value, and a dhimmi pays a similar kind to the one destroyed. al-Mughni, vol.V, p.222.

647. This is based on one report from Ibn Hanbal. It is

also the view held by Abu Hanifah, and according to one opinion of al-Shafi'i. According to another report from Ibn Hanbal, a person can demand preemption at a later time. This is the view of Malik and according to another opinion of al-Shafi'i, except that Malik restricts the demand for pre-emption to a maximum of one year. Al-Shafi'i restricts it to three days. al-Mughni, vol.V, p.241.

648. According to Malik and al-Shafi'i the pre-emptor has three options if the buyer prefers not to pull down what is on the land: 1) Give up the pre-emption. 2) Pay the value of what is put up on the land. 3) Demand the pulling down of what is on the land. According to the rationalists the buyer may be forced to pull down what has been put up on the land without any compensation paid to him. al-Mughni, vol.V, p.256.

649. This is according to one report from Ibn Hanbal. It is also the view held by Malik, and according to one of two opinions of al-Shafi'i. According to another report from Ibn Hanbal, entitlement to preemption is determined based on the number of persons involved. This is also the view held by the rationalists. al-Mughni, vol.V, pp.269-270.

650. This is also the view held by al-Shafi'i. According to Ibn Abi Layla, the seller is responsible for the preemptor. According to Abu Hanifah, the buyer is responsible if the right of preemption is claimed from him, however the seller is responsible for the preemptor if the right is claimed from the seller. al-Mughni, vol.V, p.277.

651. The rationalists also hold this view. Malik and al-Shafi'i hold the view that the right of preemption may be inherited even if it has not been demanded by the deceased before passing away. al-Mughni, vol.V, p.279.

652. This view is also held by Malik, al-Shafi'i and the rationalists, which is probably based on a report from Ibn Hanbal. Another report from Ibn Hanbal indicates that the demand for preemption in this case is invalid. See al-Mughni, vol.V, p.282.

653. Some scholars also share this opinion. According to another opinion held by Malik, al-Shafi'i and the rationalists, the non-Muslim may be granted the right of preemption. See al-Mughni, vol.V, p.288.

654. Musaqah: is a contract of lease of a plantation of fruit trees or vines with profit sharing. See Schacht, Introduction, p.119, p.155. Laoust, Precis, p.110.

655. This view is also held by Malik, Abu Yusuf and al-Shaybani. According to al-Shafi'i, musaqah contract is only permissible for date palms and grape vines.

Abu Hanifah holds the view that musaqah contract is not at all valid. M.W.S.K., vol.V, p.556.

656. i.e. to grant him additional dirhams beside the share of profit allocated for him from the product of the fruits. Ibn Qudamah explains that this is so to protect the land owner from taking the loss in case the plantation does not produce what is worth those dirhams. See al-Mughni, vol.V, p.305.

657. Muzara'ah: is a contract of lease of a field with profit sharing. Schacht, Introduction, p.111, p.155; al-Mughni, vol.V, p.309; Laoust Precis, p.110.

658. Also, Abu Yusuf and al-Shaybani permit muzara'ah contract. However, Abu Hanifah considers it a reprehensible act. al-Shafi'i permits it only with respect to a little wasteland that is a part of a date palm field but not if it is a complete wasteland. al-Mughni, vol.V, p.309.

659. This is based on one report from Ibn Hanbal which is also the view held by al-Shafi'i. Another report from Ibn Hanbal indicates that it is permissible for the share cropper to provide the seeds. This latter view is also held by Abu Yusuf. al-Mughni, vol.V, p.314.

660. This has been quoted only as part of the commentary. See al-Mughni, vol.V, p.315. Note that the statement that the muzarah'ah contract is invalid if the seeds are provided by the share cropper is based on one of two reports from Ibn Hanbal. See al-Mughni, vol.V, pp.313-316.

661. This is also al-Shafi'i's opinion. Abu Hanifah and Malik hold the view that the wages are not due immediately on concluding the contract unless an advance payment has been stipulated. al-Mughni, vol.V, p.329.

662. (D) This is based on a report from Ibn Hanbal and it is also the view held by Abu Hanifah and Malik. Hence according to this view this contract is valid. According to another report which is the view held by Abu Bakr and al-Shafi'i, this contract is invalid. Tabaqat, vol.II, p.97. al-Mughni, vol.V, pp.331-332.

663. This view is also held by Malik and al-Shafi'i. According to the rationalists, the contract is rendered void in the event of the death of one of them. al-Mughni, vol.V, p.347.

664. There are three reports from Ibn Hanbal on this case: 1) It is permissible, and this is according to the school of Malik. 2) It is only permissible with the wet-nurse. This is according to the school of Abu Hanifah. 3) It is not at all permissible. This is the view held by al-Shafi'i, Abu Yusuf and al-Shaybani. al-Mughni, vol.V, p.364.

665. See M.W.S.K., vol.VI, p.77. al-Mughni, vol.V, p.370. This is the hadith of Ibn Hajjaj al-Aslami, relating

from his father who said: I said, O Messenger of Allah: What will free me from the right of the wet-nurse? and he replied: The payment of a male or a female slave. See Abu Dawud, Kitab Nikah, bab no.11; al-Tirmidhi, Kitab Rada', bab no.6; Ibn Hanbal, vol.3, p.450.

666. This view is also held by al-Shafi'i. Abu Hanifah holds the view that payment for the additional distance travelled is not required. According to what is related from Malik, if a long distance is travelled the person is given an option to either pay the usual fee required for renting similar animal or pay a fee for each day of transgression. al-Mughni, vol.V, p.371.

667. This is based specifically on a report from Ibn Hanbal. According to al-Shafi'i, it is invalid. al-Mughni, vol.V, p.3

668. This view is also held by al-Shafi'i. al-Mughni, vol.V, p.379.

669. There are two reports from Ibn Hanbal on this case. 1) No payment is required for the damage caused without transgression. This view is also held by Abu Hanifah and al-Shafi'i. 2) Payment is required for destruction if something could have been done to prevent it but not otherwise such as through drowning. According to Malik and Ibn Abi Layla, payment is required any way. al-Mughni, vol.V, p.395.

670. This refers to an uncultivated land belonging to nobody. It is known as mawat or mayyitah or mawatan. See al-Mughni, vol.V, p.416. Laoust, Precis, p.110.

671. dhira': originally is the part of the arm from the elbow to the tip of the middle finger, and then used as a cubit measure. It is also used for the instrument for measuring it. See El[2] under dhira'.

672. Ibn Qudamah points out that though the word 'Adiyyah (ancient) is connected with 'Ad, an ancient tribe that lived right after the time of Noah (see El[2] under 'Ad), it does not necessarily refer to this ancient tribe. It simply stands for what is ancient. Hence bi'r 'adiyyah, ancient well. See al-Mughni, vol.V, p.438.

673. According to Abu Hanifah, it is forty dhira'. al-Mughni, vol.V, p.438.

674. al-Shafi'i, Abu Yusuf and al-Shaybani hold the view that the cultivating of an uncultivated land does not require permission from the Imam. al-Mughni, vol.V, p.441.

675. Waqf: is a pious foundation the substance ('ayn) of which is retained by the founder and which yields a usufruct (manfa'ah) and of which the owner has surrendered his power of disposal to be spent for a charitable purpose. There are two kinds of waqf: 1)

Waqf Khayri: religious or public endowments such as mosques, schools, hospitals, bridges etc. 2) Waqf ahli or dhurri: family endowments such as endowments for children or grandchildren or other relations or for other persons. See El[1] under wakf. See also Schacht, Introduction, pp.125-126. Laoust, Precis, p.123.

676. This view is also according to the most widely known opinion of al-Shafi'i school and the school of Abu Hanifah. According to a report from Ibn Hanbal, ownership of the object of waqf is not lost. This latter view is held by Malik and it is also according to another opinion related from al-Shafi'i. al-Mughni, vol.VI, p.4.

677. This view is also held by Ibn Abi Layla and Abu Yusuf. According to Malik, al-Shafi'i and al-Shaybani, the waqf in this case is invalid. al-Mughni, vol.VI, p.8.

678. (D) Malik and al-Shaybani also hold this view. According to Abu Bakr, which is also the view held by al-Shafi'i, Abu Yusuf and Ibn Hamid, the female children are also included. Tabaqat, vol.II, pp.97-98. al-Mughni, vol.VI, p.16.

679. This view, to Ibn Qudamah, is not strong. What is most preferable to him is that the needy persons become the beneficiaries in such a case. Probably basing his view on a report from Ibn Hanbal. (see al-Sijistani, Masa'il, p.221). According to al-Shafi'i it goes to the closest persons to the donor, divided equally between the males and females. al-Mughni, vol.VI, p.23.

680. Jihad: is the one form of war permissible in Islam. For more information on the concept of Jihad, its obligations and characteristics, see El[2] under Djihad.

681. Ibn Qudamah points out that dinars and dirhams as well as non-jewelry objects are meant by gold and silver here. See al-Mughni, vol.VI, p.34.

682. This view is also held by al-Shafi'i. Malik has two opposing views on horses and weapons donated as waqf. Abu Yusuf does not permit donations as waqf of animals, slaves, horses, commercial goods, weapons, etc. al-Mughni, vol.VI, p.36.

683. Malik, al-Shafi'i and Abu Yusuf also hold this view. According to al-Shaybani, it is not permissible. al-Mughni, vol.VI, pp.36-37.

684. This view is also held by Abu Hanifah and al-Shafi'i. According to Malik, as soon as the contract is concluded it becomes binding. al-Mughni, vol.VI, p.41.

685. Also, Malik holds this opinion. According to another report from Ibn Hanbal, which is also the view held

by the rationalists and al-Shafi'i. (see note no.684) the gift is not binding in anything until it is received. al-Mughni, vol.VI, p.44.

686. This is in reference to the hadith of al-Nu'man bin Bashir related by al-Bukhari. al-Mughni, vol.VI, p.52, or al-Bukhari, Kitab Hibah, bab no.12 & bab no.13.

687. This is according to one report from Ibn Hanbal. According to another report from him, the rest of the inheritors may demand the return of the excess gift. This latter view is held by Ibn Battah al-Ukbari and Abu Hafs al-Ukbari. al-Mughni, vol.VI, p.60.

688. This view is also held by al-Shafi'i. According to the rationalists if the gift is made to a non-relative, it may be revoked provided there has not been any material return for it. If it is made to a relative, then it may not be revoked. al-Mughni, vol.VI, p.65.

689. al-Umra: is an archaic form of donation for life. al-Ruqba: is another archaic form of donation with the stipulation that the object of donation becomes the property of the surviving party (ruqba) between the donor and the donee. According to most scholars these two forms of donation are valid. According to others, they are invalid. See Schacht, Introduction, p.158. See also al-Mughni, vol.VI, pp.68-70. M.W.S.K., vol.VI, pp.302-303. It is worth noting that there are two opposing views on the offer to dwell in house for life. 1) According to most scholars including al-Shafi'i and the rationalists such an offer is not considered the same as umra and ruqba. 2) According to another view, it is treated the same as umra. al-Mughni, vol.VI, p.71.

690. Luqatah or luqtah: is a lost property of a person found by another person. Schacht, Introduction, p.137. al-Mughni, vol.VI, p.73.

691. This view is also held by al-Shafi'i. According to Malik and the rationalists, the finder gives the found object to charity and whenever its owner shows up the owner is given an option to choose between its reward from the Almighty God and its monetary compensation from the finder. According to Abu Hanifah, ownership of the found object can be acquired by a poor person who has no relatives. al-Mughni, vol.VI, p.78.

692. Also Malik holds this view. According to Abu Hanifah and al-Shafi'i, evidence is required as well. al-Mughni, vol.VI, p.84.

693. This is according to one report from Ibn Hanbal, and which, according to Ibn Qudamah, is the authentic view of the school. Another report from Ibn Hanbal indicates that ownership of such a sheep can not be

acquired by the finder. al-Mughni, vol. VI, pp.103-104.

694. This view is also held by al-Shafi'i. According to Malik, if a lost camel is found in a city, public announcement is required but if seen in the desert then it should not be interfered with. Abu Hanifah holds the view that it is permissible to pick up a lost camel for it is considered a luqatah like a sheep. al-Mughni, vol.VI, p.107.

695. Wala here stands for the estate of the foundling i.e. whatever is left behind by the foundling is inherited by all Muslims. No individual can claim patronage over the foundling (laqit) because the foundling is considered free and has no particular inheritor. al-Mughni, vol.VI, p.117. Laoust, Precis, p.113.

696. al-Shafi'i also holds this view. This case either pertains to when each of them cannot present an evidence or when both of them have equally strong evidence. According to rationalists, there is no need for a physiognomist, the foundling is simply attached to both of them. al-Mughni, vol.VI, p.125.

697. One third of the estate is the recommended portion that may be bequeathed to someone other than legal heir without requiring the approval of the testator's heirs. This is based on the Prophet's recommendation to Sa'd bin Abi Waqqas when he said to the latter: "Give out one third, one third is a lot". See M.W.S.K., vol.VI, p.414.

698. (D) This second report is the report on which is based Abu Bakr's view. According to a third report from Ibn Hanbal, the beneficiary of the will is given the least share of a blood relative, which must not be, according to Abu Hanifah more than one-sixth, and must not be according to Abu Yusuf and al-Shaybani more than one-third. al-Shafi'i holds the view that the beneficiary of the will may be given only what is desired by the heirs. Tabaqat, vol.II, p.98; al-Mughni, vol.VI, p.159. Hence, if three male children are left behind along with the beneficiary of the will, the beneficiary of the will, according to all the three reports, receives one share of the total six shares. If the wife of the deceased is included as well, the estate is divided into forty equal shares, and the beneficiary of the will receives one share, according to the second report, which is added to forty to bring the grand total shares to forty one. Based on the third report, the beneficiary of the will receives a portion equal to that of the wife of the deceased. i.e. one-eighth, which is the least of the fixed shares of inheritance, hence he receives one-eighth of the forty shares i.e. five, which is added to the forty to bring the grand total shares to

forty-five. Based on the first report, one-sixth of the shares is calculated to determine the grand total shares, hence forty is multiplied by six, which is two hundred and forty, and then one-sixth of it comes out to forty which is thus received by the beneficiary of the will and which is added to two hundred and forty to bring the grand total shares to two hundred and eighty. i.e. the beneficiary of the will receives forty, the wife of the deceased receives thirty, and each child receives forty-two. al-Mughni, vol.VI, p.160.

699. This is the view of most scholars including al-Shafi'i and the rationalists. According to Malik, the beneficiary of the will in this case receives one-third, and the remaining shares go to the children. al-Mughni, vol.VI, p.164.

700. This view is also held by Malik, al-Shafi'i, Abu Yusuf and al-Shaybani. Note the calculation of the shares here. It is based on the fractional portions of the wealth bequeathed to both 'Amr and Zayd. According to Abu Hanifah, in the event of the inheritor's disapproval none of the beneficiaries of the will may receive more than one-third of what is bequeathed to him. al-Mughni, vol.VI, p.173.

701. This view is based on a report from Ibn Hanbal. See al-Sijistani, Masa'il p.214. According to the Hanbali school, a will made by a ten year old child is valid, but a will made by a child of less than seven years is invalid. There are two opposing reports on a will made by a child between the ages of seven and ten whether valid or invalid. According to Malik, a child can make a will. According to the rationalists, only a child of legal age can make a will. There are two views for al-Shafi'i. 1) A child can make a will. 2) Only a child of legal age can make it. al-Mughni, vol.VI, p.215.

702. According to al-Shafi'i, the non-Muslims are included as well. al-Mughni, vol.VI, p.219.

703. Mawla: is a common name for both patron and client between whom there is strictly personal relationship of clientship (wala) which results from a person manumitting his slave. When this is done, the manumitted slave remains to his former master in that personal relationship. Schacht, Introduction, p.130. Note that the term is used here to refer to the client i.e. the manumitted slave.

704. This second view is also held by Malik and al-Shafi'i, while the first view is also held by the Iraqi scholars. al-Mughni, vol.VI, p.220.

705. Abu Hanifah also holds this view, but adds that in case one-third is not enough to gain the person a complete freedom, then the person may work to pay up

for the remaining part of what he is worth to gain complete freedom. According to al-Shafi'i, such a will is invalid unless it is for a complete manumission of the slave. al-Mughni, vol.VI, p.224.

706. According to Abu Hanifah and al-Shafi'i, one of the two slaves may have to be specified without the need for casting any lots. al-Mughni, vol.VI, p.224.

707. The four male generations up are as follows: the father, his father, his grandfather and his (first) grandfather. Hence, only the children of such parents may be beneficiaries of the will. Apparently this view is based on one report from Ibn Hanbal. According to another report from him other relatives beyond four male generations up are included. This latter view is according to al-Shafi'i school. To Abu Hanifah, every cognate unlawful for marriage is considered a person's relative. According to Malik, the bequest is first apportioned to the closest relative then to the next closest relative and so on based on ijtihad (which often means estimate by experts. see Schacht, Origins, p.116). M.W.S.K., vol.VI, pp.549-550.

708. A sudden change in the page numbers is noticed here. p.241 appears right after p.224 indicating that some pages are missing in this edition. Other editions of the Mukhtasar contain fully those missing pages, such as for example al-Mughni, edited by al-Zayni, Maktabat al-Qahirah 1969; cf. vol.VI, pp.225-240; cf also M.W.S.K., vol.VI, pp.541-566.

709. According to Malik the beneficiary deserves a partial share of the blood money if the testator is killed accidentally but not if murdered. al-Mughni, vol.VI, p.241.

710. This is so because, according to what is related by Ibn Mansur from Ibn Hanbal, blood money is not considered part of a will. al-Mughni, vol.VI, p.241. M.W.S.K., vol.VI, p.566.

711. Ibn Qudamah's text of the Mukhtasar reads: <I have dismissed>. See al-Mughni, vol.VI, p.242.

712. Note that this statement is according to one report from Ibn Hanbal. According to another report from him, which is also the view held by Malik, the slaves are first emancipated out of what is bequeathed and anything remaining after that is divided between the rest of the beneficiaries in accordance with their shares of the bequest. al-Mughni, vol.VI, p.262.

713. This case is similar to what is related from Ibn Hanbal concerning a man to whom one thousand dirhams is bequeathed, and then he declines it. Ibn Hanbal hence, rules that the thousand dirhams go back to the heirs. See al-Sijistani, Masa'il, p.216.

714. Ibn Qudamah's text of the Mukhtasar reads here: <two

brothers>. al-Mughni, vol.VI, p.275. Apparently, Ibn Qudamah's version here is stronger and more comprehensive, because one sixth still goes to the mother if the deceased has brothers. See Qur'an:Surah 4:11.

715. Ibn Qudamah's version of the Mukhtasar reads <the paternal uncle>. See al-Mughni, vol.VI, p.278.

716. These two inheritance cases are known as "'Umariyyatan", i.e. two cases judicially decided upon by 'Umar bin al-Khattab. See al-Mughni, vol.VI, p.279.

717. Ibn Qudamah only mentions this in his commentary. See al-Mughni, vol.VI, p.279. Note that it is so called because 'Umar in such a case, excluded the germane brothers, and it was said to him: O commander of the faithful! Assuming our father was a donkey (himar), don't we have the same mother? Hence, 'Umar allowed them to join the uterine brothers in their share of one-third. Ibid, vol.I, p.279. This case is also known as Musharrikah i.e. a case in which the germane brothers share with the uterine brothers in the share of the uterine brothers i.e. one-third. It is worth mentioning that Ibn Hanbal holds the view that the germane brothers are excluded in this case as mentioned by al-Khiraqi. This is also the view held by Abu Hanifah. According to an opposing view, which is also the view held by Malik and al-Shafi'i, the germane brothers equally share with the uterine brothers. Ibid, vol.VI, pp.279-280.

718. This all adds up to 1 2/3 times the actual legacy. In this case 'awl is applied. (See note no.720). Hence the common denominator of their fractional shares which is six is increased to ten which will reduce each person's share appropriately. This case is called "Umm al-Furukh" (Mother of the young ones) because of its big increase by 'awl. See M.W.S.K., vol.VII, p.25.

719. This view is held by most jurists including Abu Hanifah, Malik and al-Shafi'i. According to another view endorsed by Abdallah bin Mas'ud and other scholars, the whole estate in this case goes to the paternal cousin who is at the same time an uterine brother of the deceased. al-Mughni, vol.VI, p.284.

720. 'Awl: signifies the method of increasing the common denominator of the fractional shares in an inheritance when their sum amounts to more than one unit. Hence the share of each individual is reduced proportionally. EI^2 under 'Awl. See also Schacht, Introduction, p.172. al-Mughni, vol.VI, p.282.

721. Qur'anic heirs: are those heirs entitled to fixed shares of inheritance mentioned in the Qur'an, which are as follows: 1/2, 1/4, 1/6, 1/8, 2/3, 1/3. See

Laoust, Precis, pp.138-142.

722. This has only been stated in the commentary. See al-Mughni, vol.VI, p.297.

723. There are two reports from Ibn Hanbal regarding the grandmother on the father's side whether or not she is nearer to the deceased than the grandmother on the mother's side. 1) The paternal grandmother excludes the maternal grandmother. This view is held by Abu Hanifah and his followers, and it is according to one of the two views of al-Shafi'i. 2) They both share the property. This latter view is held by Malik, and it is also according to the other view of al-Shafi'i. al-Mughni, vol.VI, p.302.

724. This apparently is what the Hanbali school upholds. According to another view held by Malik, al-Shafi'i, and the rationalists, which is also according to a report from Ibn Hanbal, she cannot inherit it in such a case. al-Mughni, vol.VI, p.303.

725. According to the Hanbali school, only three grandmothers as mentioned here can inherit. The fact that al-Khiraqi added saying "however many" is an indication that he probably is of the opinion that more than three grand-mothers of the same degree may inherit, though there is another probability, according to Ibn Qudamah, that al-Khiraqi may only be restricting inheritance out of several grandmothers to three grandmothers. See al-Mughni, vol.VI, pp.304-305.

726. Mawla ni'mah (Mawlat ni'mah "F") refers to the emancipating patron between whom and the emancipated slave is strictly personal relationships of clientship. (see note no.703). The patron is also called Mawla Mu'tiq (Mawlat mu'tiqah "F"). See al-Mughni, vol.VI, p.305.

727. He was Zayd bin Thabit al-Dahhak, one of the Prophet's secretaries entrusted with the writing of the Qur'an. He died in the year 45 A.H. or 51 A.H. See 'Armush, Muwatta', p.724. See also al-Qattan, Mabahith, p.108. According to Zayd bin Thabit, in a case involving the grandfather, brothers and germane sisters or consanguine sisters, the grandfather receives whichever share he is better off with, from either sharing the property with the rest of the heirs like one of their own brothers (muqasamah) or receiving one-third of the whole estate. See al-Mughni, vol.VI, p.309.

728. Muqasamah: is to share with the rest of the heirs in the property while assuming oneself in the same degree as other heirs. In this case, the grandfather accepts to be treated the same as other brothers and sisters in their share of inheritance. See note no.727. See also Laoust, Precis, p.138.

729. This is so when there is _'awl_. See note no.720.

730. _'Akdariyyah_: It is so called because the question itself is _akdar_ i.e. troubled, obscure, or because the principles of Zayd bin Thabit in relation to the grand- father are "troubled, disturbed" in this case, i.e. it has been subjected to _'awl_ in relation to the grandfather (see note no.727). Other scholars believe Akdar to be the name of a man to whom this case was submitted by 'Abd al-Malik bin Marwan. _El²_ under _Akdariyya_. _al-Mughni_, vol.VI, p.313.

731. This has been mentioned only in the commentary. See _al-Mughni_, vol.VI, p.313.

732. This has only been mentioned in the commentary. See _al-Mughni_, vol.VI, p.315. This case is called al-Kharqa' because of the many divergencies of views of the Prophet's companions on this case. Some say there are seven different views on this case. See _al-Mughni_, vol.VI, p.315. Laoust, _Precis_, p.140.

733. This is based on the principle of Zayd bin Thabit on which the grandfather receives what he is better off with. Here, _muqasamah_, is better, hence he shares the residue with the sister. According to 'Ali bin Abi Talib, the daughter receives one half, the grandfather is given one-sixth, and the residue goes to the sister. According to Ibn Mas'ud, the daughter receives one-half of the estate, while the grandfather and the sister equally divide the residue between them in two halves. _al-Mughni_, vol.VI, p.316.

734. Distant kinsmen or cognates (_Dhawu 'l-Arham_): are neither _Qur'an_ic heirs nor agnatic heirs (_'asabah_). See _al-Mughni_, vol.VI, p.317. Laoust, _Precis_, p.146. The following is a list of distant kinsmen: 1)daughter's child 2)sister's child 3)brother's daughter 4)uterine brother's child 5)paternal aunt 6)paternal uncle of one's mother 7)maternal uncle 8)maternal aunt 9)paternal uncle's daughter 10)mother's father 11)a grandmother closely followed down by a father between two mothers. See _M.W.S.K._, vol.VII, pp.82-83.

735. (D) This latter view is held by Abu Bakr based on this second report from Ibn Hanbal. See _Tabaqat_, vol.II, pp.98-99.

736. This is according to one report from Ibn Hanbal. According to another report from him, all of the distant kinsmen, males and females, equally share the inheritance without any exception. _al-Mughni_, vol.VI, p.325.

737. This has been mentioned only in the commentary. See _al-Mughni_, vol.VI, p.329.

738. This has been mentioned only in the commentary. See _al-Mughni_, vol.VI, p.331.

739. This is the child whose paternity has been contested.

Hence the husband affirms under oath that the wife has been unchaste or that the child born of her is not his, and she affirms under oath the contrary. Then the marriage is dissolved. For this procedure see Qur'an: Surah 24:6-9. See also Schacht, Introduction, p.165. Note that there are two reports from Ibn Hanbal regarding the inheritance of such a child: 1) His agnatic heirs are the same as those of his mother. 2) His mother is considered his agnatic heir. If she is unavailable, her agnatic heirs become his. This latter view is also held by al-Shafi'i. al-Mughni, vol.VI, p.341.

740. This view is also held by Malik. According to Abu Hanifah, the acknowledger equally shares what he has with the acknowledged brother. al-Shafi'i holds the view that the acknowledger may not give the acknowledged brother anything. al-Mughni, vol.VI, p.354.

741. See section 24.

742. fay': is fundamentally a source of public revenue. See section 26.1. See also Farrukh, Public and Private Law, p.47. On the historical institution of fay' and its theoretical explanation. See EI[2] under fay'. There are three different reports from Ibn Hanbal regarding the property of an apostate killed in the state of apostasy. 1) It becomes fay', a source of public treasury for Muslims. This view is also held by Malik and al-Shafi'i. 2) His property goes to his Muslim heirs. 3) His property goes to his heirs among those who share the same religion with him. If they are not available, it becomes fay'. According to Abu Hanifah, only what is earned in the state of apostasy becomes fay'. al-Mughni, vol.VI, p.372.

743. The words: "are drowned" (ghariqa) are based on Ibn Qudamah's text. Apparently the word ('arafa - to know) is a misprint in al-Shawish's edition. See al-Mughni, vol.VI, p.378. Cf also al-Shawish, Mukhtasar, vol.VI, p.89.

744. Wala': (clientship) here signifies the right to the inheritance of the property left by one's emancipated slave. al-Mughni, vol.VI, p.411. See also Lane. See also note no.703.

745. This is according to a report from Ibn Hanbal. Hence, according to this view the wala' is offered only to Allah. Malik holds the view that in such a case, the wala' is granted to the Muslim Community. According to al-Shafi'i and the Iraqi scholars, the wala' belongs to the manumitter. al-Mughni, vol.VI, p.413.

746. Note: The words: "A distant kinsman" (dha rahim) are based on Ibn Qudamah's text. Apparently the word "dirhams" (darahim) is a misprint in al-Shawish's

edition. See al-Mughni, vol.VI, p.414. Cf also al-Shawish, Mukhtasar, p.89.

747. Mudabbar: is a slave manumitted with effect at the death of the owner. Schacht, Introduction, p.129.

748. This view is also held by al-Shafi'i, Abu Hanifah and Abu Yusuf. According to Malik, the wala' goes to the person on whose behalf the slave is manumitted. See al-Mughni, vol.VI, pp.416-417.

749. This is also the opinion of al-Shafi'i and Malik. According to Abu Hanifah, Abu Yusuf and al-Shaybani, the wala' goes to the manumitter. See al-Mughni, vol.VI, p.417.

750. See al-Sijistani, Masa'il, p.219. Ibn Hanbal refers here to the hadith of Hamzah's daughter, but nothing is mentioned by Ibn Hanbal specifically regarding the manumitted slave's daughter. Abu Ya'la points out, according to Ibn Qudamah, that he finds no such report from Ibn Hanbal as claimed by al-Khiraqi. Ibn Hanbal's response to a question on to whom belonged the freed slave in the hadith of Hamzah's daughter, is that he belonged to Hamzah's daughter and not to Hamzah himself, and that Hamzah's daughter herself inherited by virtue of wala' because she freed her own slave; and this is the view of most scholars. As regards the Prophet's ruling in favor of the inheritance of Hamzah's daughter from Hamzah's client, this is based on what is related by Ibrahim al-Nakha'i that Hamzah's client died leaving his daughter, and the Prophet ruled for the daughter one half of the estate, and the other half for Hamzah. However, Ibn Qudamah points out that according to an authentic and most correct opinion, the manumitted slave belonged to Hamzah's daughter and he was manumitted by Hamzah's daughter, and that the Prophet ruled for the daughter of the manumitted slave, after his death, one half of the estate, and the other half for Hamzah's daughter. al-Mughni, vol.VI, pp.424-425.

751. Note that Hamzah's daughter was the sister of 'Abd-Allah bin Shaddad from the same mother by the name of Salma. See al-Mughni, vol.VI, p.425.

752. This has been included only in the commentary. See al-Mughni, vol.VI, p.424.

753. This is also according to an opinion of al-Shafi'i, and the view held by Abu Yusuf and al-Shaybani. There is another opinion of some scholars who prefer the granting of the whole inheritance to the grandfather. According to Malik and another opinion of al-Shafi'i, the whole inheritance goes to the brother. See al-Mughni, vol.VI, p.430.

754. i.e. when the manumitter of a slave dies leaving a son or a grandson, the right to the inheritance of the property left by the manumitted slave goes to the

son, and not to the grandson.

755. This is when the manumitter's heirs and agnatic heirs are not alive. See M.W.S.K., vol.VII, pp.276-277.

756. Deposit (Wadi'ah): is the commission given by the owner to another person to hold the depositor's property in safe custody. It is a fiduciary relationship (amanah). Schacht, Introduction, p.157. Laoust, Precis, p.115.

757. This view is also held by Malik and al-Shafi'i. Because the fragmentary items are identifiable or distinguishable from those which are complete and in which case the depositary was not incapable of returning what is deposited with him, he is not held liable for their loss. See M.W.S.K., vol.VII, p.284.

758. According to al-Shafi'i, both of them must take the oath, then the deposit is kept for both of them until a peaceful settlement is reached. According to another opinion of al-Shafi'i the deposit is divided between the two of them. This latter view is also held by Abu Hanifah, Abu Yusuf and al-Shaybani. See al-Mughni, vol.VI, p.451.

759. This is also the view held by al-Shafi'i. Malik holds the view that no payment is required if returned or if its equivalent is returned. According to the rationalists, if what is taken has not been spent before returning it, no payment is required. Payment is only required if part of it has been spent before returning it or returning its equivalent. al-Mughni, vol.VI, p.451.

760. ghanimah: is a booty taken from the enemy in war one-fifth of which is paid to the public treasury. Schacht, Introduction, p.136. Note the fundamental difference between fay' and ghamimah. Though each of them signifies a booty, in the case of the former, it is taken without the use of force of arms, see Qur'an:Surah 59:6, while in the case of the latter, it is taken by the use of force of arms, see Qur'an:Surah 8:41. For additional information on ghanimah see $E1^2$ under ghanimah.

761. According to one report from Ibn Hanbal, which is also the view held by al-Shafi'i, the fay' and ghanimah are each divided first of all into five shares. According to a second report from Ibn Hanbal, ghanimah is only divided into five shares and not the fay'. Ibn Qudamah points out that Abu Ya'la mentions that he finds no such report which states that fay' is divided into five shares but only the contrary. Regarding the dividing of the one-fifth of a fay' or a ghanimah into five shares as stated by al-Khiraqi, al-Shafi'i also holds this opinion. Some scholars say it is divided into six shares, i.e. setting apart a share for Allah (see Qur'an:Surah 8:41). According to

the rationalists, it is divided into only three shares i.e. for the orphan, the needy and the wayfarer. Malik holds the view that the fay' and the fifth (of the ghanimah) are the same, hence they are sent into the public treasury. See al-Mughni, vol.VI, pp.455-457.

762. See note no.348.

763. This is according to one report from Ibn Hanbal and it is also the view held by al-Shafi'i. According to a second report from Ibn Hanbal, it is equally divided between the males and females. See al-Mughni, vol.VI, p.461.

764. This has been included only in the commentary. See al- Mughni, vol.VI, pp.460-462.

765. This statement is completely missing in al-Shawish's edition of the Mukhtasar, apparently due to printing error or probably due to its omission from the manuscript on which this version of the Mukhtasar was basically published. This is evident from the fact that al-Shawish's version right after mentioning to whom belongs the second share of the one-fifth - skips to the mention of the fifth share of the one-fifth as belonging to the wayfarers. See al-Shawish, Mukhtasar, p.91.

766. This is based on a report from Ibn Hanbal. See al-Sijistani, Masa'il, p.239. Most scholars hold the view that a cavalry soldier receives three shares. Abu Hanifah holds the view that he receives two shares. See al-Mughni, vol.VI, p.468.

767. See Qur'an:Surah 9:60.

768. According to Abu Hanifah, these people no longer have a share. This is also according to one of al-Shafi'i's opinions. See al-Mughni, vol.VI, p.475.

769. This is based on one report from Ibn Hanbal, which is also the view of Malik. According to another report from Ibn Hanbal, which is also the view held by al-Shafi'i, this is not permissible. According to Abu Hanifah, part of the alms may be used towards but not for complete emancipation of a slave. It may also be used to assist the mukatab. See al-Mughni, vol.VI, p.478.

770. This has been included only in the commentary. See al- Mughni, vol.VI, p.480.

771. Ibn Qudamah's text here reads: <what to spend against>. See al-Mughni, vol.VI, p.482.

772. Apparently this is based on a report from Ibn Hanbal. According to another report from him, alms may not be given for the purpose of undertaking the hajj. This latter view is held by Abu Hanifah, Malik and al-Shafi'i. See al-Mughni, vol.VI, p.483.

773. This has been included only in the commentary. See al- Mughni, vol.VI, p.488.

774. This has been included only in the commentary. See al- Mughni, vol.VI, p.488.

775. This view is also held by al-Shafi'i. According to Abu Yusuf, the validity of the marriage is based on the approval of the marriage guardian if she does marry without him. Abu Hanifah holds the view that a woman may enter into marriage without the marriage guardian. However, he mentioned that it is valid if the husband is a perfect match (kuf'). See al-Mughni, vol.VII, p.7. Abu Ya'la, Sharh, p.2b (2747). See also Ibn Rushd, Bidayah, vol.II, p.8.

776. Two reports are related from Ibn Hanbal on this case. 1) Two witnesses are required. This is the most popular view of the Hanbali school. It is also the view held by al-Shafi'i and the rationalists. 2) It is valid even without the presence of witnesses. This is a view of Malik but on the condition that the marriage be publicly announced. Abu Hanifah holds the view that the marriage is valid in the presence of a male and two female witnesses. See al-Mughni, vol.VII, p.8. Abu Ya'la, Sharh, p.2b (2747).

777. This view is also held by al-Shafi'i. Abu Hanifah holds the view that it is valid to marry a dhimmi woman in thepresence of two dhimmi witnesses. In other words Abu Hanifah holds the view that a Muslim male may marry a woman of the people of the scripture in the presence of two non-Muslims (kafirayn) witnesses. See al-Mughni, vol.VII, p.9. See also Abu Ya'la, Sharh, p.2b (2747).

778. al-Shafi'i also holds this view. This is also the most popular view of Abu Hanifah. According to Malik and Abu Yusuf, her son is more entitled. This latter view is alsoaccording to a report form Abu Hanifah. See al-Mughni, vol.VII, p.14.

779. This is according to one of four reports related from Ibn Hanbal on this case; and it is also the view held by al-Shafi'i. 2) The son has more rights than the grand-father. This is according to an opinion of Malik. 3) The brother has more rights than the grandfather. This is according to another opinion of Malik. 4) Both the grandfather and the brother are of the same degree. See al-Mughni, vol.VII, p.14.

780. The rationalists also hold this view. According to al- Shafi'i, the son can not give in marriage unless he is a son of the paternal uncle of the woman or a mawla or a hakim. al-Mughni, vol.VII, p.15.

781. (D) Abu Bakr holds the view that the germane brother has more rights than the consanguine brother. This is also the view held by Abu Hanifah which is also according to the most recent view of al-Shafi'i, Tabaqat, vol.II, p.100.

782. Ibn Qudamah explains that the sultan here is the imam

or the _hakim_ or someone authorized by one of them to conduct the marriage. _al-Mughni_, vol.VII, p.17. _M.W.S.K._, vol. VII, p.351.

783. This is according to one report from Ibn Hanbal which is also the view held by al-Shafi'i although some Shafi'ites do not allow him to do that at all. According to a second report from Ibn Hanbal, the woman may put another man in charge of marrying her female slave to someone. According to still another report from him which according to Ibn Qudamah probably indicates that he is quoting an opinion other than his own, the female slave's mistress herself marries her to someone. This latter view is held by Abu Hanifah. _al-Mughni_, vol.VII, pp.23-24.

784. This is according to one of two reports. According to the other report, the _mawlah_ i.e. the manumitted slave's mistress may appoint another man to marry the manumitted female slave to another person. _al-Mughni_, vol.II, p.24.

785. This is according to one report from Ibn Hanbal. According to another report, the person may marry himself to the woman. This view is held by Abu Hanifah and Malik. According to al-Shafi'i, the judge (hakim) must marry her to him. _al-Mughni_, vol.VII, p.25. See also Abu Ya'la, _Sharh_, p.4b (2747).

786. This view is based on one of two reports from Ibn Hanbal. According to the other report, the validity of the marriage in such a case is subject to the approval of the person more entitled to give her in marriage. _al-Mughni_, vol.VII, p.28.

787. This is based on one of two reports from Ibn Hanbal regarding the stipulation of a _kuf'_ for a valid marriage. According to the other report which is also the view held by Malik, al-Shafi'i and the rationalists, _kuf'_ is not a requirement for the validity of the marriage. _al-Mughni_, vol.VII, p.33. Note that _Kuf'_, from _Kafa'ah_ (equality), is a term designating equivalence of social status, fortune and profession as well as parity of birth, which should exist between husband and wife without which the marriage is considered ill-matched and consequently liable to break-up. _EI²_ under _Kafa'ah_.

788. This view is based on a report from Ibn Hanbal. According to another report from him, the person must fulfil five conditions to be a _kuf'_: fulfil the two conditions mentioned by al-Khiraqi, and must also be a free person, professional and wealthy. This is also the view held by al-Shafi'i, except that he requires the fulfillment of a sixth condition. That is, the person must also be free from four defects namely: damaged penis, castration, impotence and elephantiasis. This is also the view held by Abu

Hanifah except that he does not require the person to be professional or free from the four defects. According to Malik, kafa'ah is determined by religiousness only. al-Mughni, vol.VII, p.35.

789. (D) This view is also held by Abu Ya'la, Malik and al- Shafi'i. According to another report from Ibn Hanbal which is the view held by Abu Bakr, the virgin daughter at the age of nine cannot be forced into marriage. Abu Hanifah holds the view that as soon as she is of legal age she can no longer be forced into marriage. Tabaqat, vol.II, p.99.

790. This view is also held by Malik. According to al-Shafi'i, the father has no right to do that. If it is done, then she is entitled to a marriage portion equivalent to what she is worth. al-Mughni, vol.VII, p.48.

791. (D) Apparently al-Khiraqi holds the view that the insane may be married to a woman without his permission. Abu Bakr holds the view that he cannot be forced into marriage at all if he is of legal age. See Tabaqat, vol. VII, p.100. See also al-Mughni, vol.VII, p.50.

792. (D) Hence the marriage is valid if a person appointed by testament concludes it. According to another report which is basically the view held by Abu Bakr, Abu Hanifah and al-Shafi'i, the marriage is invalid if concluded by a person appointed by testament (wasi). Tabaqat, vol.II, p.99.

793. This is according to one of two opposing views of al-Shafi'i. According to Abu Hanifah and Malik, it is valid. al-Mughni, vol.VII, p.56.

794. This is based on a report from Ibn Hanbal and it is also the view held by Abu Hanifah and Malik. According to another report from Ibn Hanbal, lots are cast between them in such a case to determine who keeps the wife, and the loser among them must divorce the woman and the marriage is reconcluded for the person in whose favor the lots have fallen. al-Mughni, vol.VII, p.61.

795. This is according to a report from Ibn Hanbal and it is also according to the school of al-Shafi'i. Another report from Ibn Hanbal states that the validity of the marriage is subject to the approval of his master. This latter view is held by the rationalists. al-Mughni, vol.VII, p.63.

796. This has been related by Ibn Hanbal. See al-Mughni, vol.VII, p.65. There are two reports from Ibn Hanbal on this case: 1) The wife is entitled to two-fifths of the marriage portion if she finds out that the husband is a slave, otherwise she is entitled to the full marriage portion from the slave husband. 2) She is only entitled to the marriage portion equivalent

to what she is worth. Ibid, vol.VII, p.65.

797. It is permissible to marry a female slave if a person cannot afford to marry free, believing woman and also has fear that he might commit sin. See Qur'an:Surah 4:25. This view is held by most scholars except Abu Hanifah and his companions who believe that provided the man is not married to a free woman it is permissible for him to marry a female believing slave or a woman of the people of the Scripture regardless of whether or not the marrying of a free woman can be afforded or whether or not there is a fear of committing sin. See al-Sabuni, Mukhtasar Ibn Kathir, vol.I, p.377.

798. According to Abu Hanifah, they are considered slaves as well. al-Mughni, vol.VII, p.72.

799. This view is also held by al-Shafi'i and the rationalists. Malik holds the view that a slave may marry up to four wives. Abu Ya'la points out that a slave may only marry two wives at most based on the unanimous opinion (ijma') of the companions of the Prophet. See al-Mughni, vol.VII, p.86. See also Abu Ya'la, Sharh, p.11b (2747).

800. This is according to what is mentioned by Ibn Hanbal. It is also the view held by Malik. According to the rationalists, this is only a reprehensible act. al-Shafi'i has two opposing views on this case. al-Mughni, vol.VII, p.86.

801. This view is also held by the rationalists. According to Malik and al-Shafi'i, in such cases, the sister of the divorcee may still be married even before the 'iddah is completed; and also another woman may be married in place of the fourth divorcee wife even before the 'iddah is completed. al-Mughni, vol.VII, p.88-89.

802. See al-Bukhari, Kitab Shurut, bab no.6; Muslim, Kitab Nikah, hadith no.63; Abu Dawud, Kitab Nikah, bab no.39; Ibn Hanbal, vol.4, p.144.

803. According to Malik, al-Shafi'i and the rationalists, such stipulations are invalid. al-Mughni, vol.VII, p.93.

804. Some followers of al-Shafi'i school hold the view that the husband in such a case is not required to provide any maintenance for her. al-Mughni, vol.VII, p.107.

805. Ibn Qudamah's version of the Mukhtasar reads: <Mothers- in-law and step-daughters whose mothers' marriages have been consummated>, al-Mughni, vol.VII, p.110. Ibn Qudamah's version here looks more accurate and consistent with the Qur'an (see Qur'an:Surah 4:23). According to what is mentioned by Ibn Hanbal, the mother-in-law is unlawful to marry just by the concluding of the marriage contract with her

daughter. This is also the view of most scholars including Malik, al-Shafi'i and the rationalists. See al-Mughni, vol.VII, p.111.

806. i.e. a baby suckled by a person's wife becomes unlawful for marriage to the person. Hence the man becomes the baby's father just as the suckled baby in this case becomes his child as well. Abu Ya'la explains how the process works and that is, the man entertains sexual relations with his wife, then she becomes pregnant and then develops milk with which she suckles the child five sucklings thus prohibiting marriage between the couple and the suckled child. al-Mughni, vol.VII, p.113. Abu Ya'la, Sharh, p.13b (2747).

807. This view is also held by the rationalists. According to Malik and al-Shafi'i unlawful sexual intercourse does not make marriage unlawful. al-Mughni, vol.VII, p.117. Abu Ya'la, Sharh, p.14b (2747).

808. Ibn Qudamah's version of the Mukhtasar states that <the paternal aunt of a person's mother and the maternal aunt of the person's mother are both as prohibited as two sisters married together>. al-Mughni, vol.VII, p.128.

809. i.e. one who practices the ancient religion of Persia called Zoroastrianism. For detailed information on this religion and its adherents see El[2] under Madjus.

810. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah, a Muslim may marry her. Abu Ya'la, Sharh, p.17a(2747). al-Mughni, vol.VII, p.135.

811. See Qur'an:Surah 4:25. This has been included only in the commentary. See al-Mughni,vol. VII,p. 135 .

812. This view is according to one of two reports from Ibn Hanbal and it is also the view held by Malik and the rationalists. According to another report from Ibn Hanbal, it is recommended for him to marry only a female slave. This latter view is held by al-Shafi'i. al-Mughni, vol.VII, p.139.

813. (D)Al-Shafi'i holds this view as well . According to a different view held by Abu Bakr, they are both immediately separated from one another such as the case is when the marriage is not consummated. Tabaqat, vol.II, pp.100-101. al-Mughni, vol.VII, p.153.

814. This view is also held by Malik, al-Shafi'i and al-Shaybani. According to Abu Hanifah and Abu Yusuf, if they are all married in one contract then all their marriages become void. If married in different contracts then only the marriage of the first four wives become valid. Abu Ya'la, Sharh, pp.19a-19b (2747). al-Mughni, vol.VII, p.157.

815. al-Shafi'i also holds this view. Abu Hanifah

maintains here the same view as held when more than four wives are married. al-Mughni, vol.VII, p.162. See also note no.814.

816. The argument here among the scholars is the same as that of the free man married to more than four wives. See note no.814.

817. Ibn Qudamah's text of the Mukhtasar reads: "before both of them accept Islam". al-Mughni, vol.VII, p.170.

818. Note that this view is according to a report from Ibn Hanbal. It is also the view held by al-Shafi'i. According to another report from Ibn Hanbal, which is also the view held by Abu Hanifah and Malik, they are both immediately separated from one another. al-Mughni, vol.VII, p.174.

819. This kind of marriage is called "al-Shighar". It consists in marrying a woman under one's guardianship to another person and the latter does the same to the former without demanding marriage portions from one another. To al-Khiraqi, whether or not the marriage portions are designated between them in this case, the marriage is invalid. Ibn Qudamah points out that according to what is related from Ibn Hanbal, the marriage is valid if the marriage portions of both women are designated. This is also the view held by al-Shafi'i and Abu Hanifah. Abu Ya'la, Sharh, p.21a (2747). al-Mughni, vol.VII, p.176-177.

820. Mut'ah marriage is that which is contracted only for a period of time. The sunni scholars are opposed to this kind of marriage while the Shi'ites permit it. al-Mughni, vol.VII, p.178-179.

821. Such as if a woman has been divorced three times and is no longer lawful to her husband until she has married and consummated her marriage with another man. See Qur'an:Surah 2:230.

822. (D) Abu Bakr holds the view that the marriage is valid if the muhrim only marries to another person. See al- Mughni, vol.VII, p.184.

823. This statement is read in Ibn Qudamah's text of the Mukhtasar as: <if the man is found to be insane (majnun)>. See al-Mughni, vol.VII, p.184. See also al-Shawish, Mukhtasar, pp.97-98. Here, al-Shawish's version seems more comprehensive and inclusive. It states not only the defect of a completely damaged penis (jubb), but of insanity as well, while Ibn Qudamah's version here has no mention of the defect of a completely damaged penis (jubb) and only contains a repetition of the defect of insanity. However Ibn Qudamah mentions the case of a completely damaged penis only in his commentary as one of those defects that may cause annulment of marriage contracts. See al-Mughni, vol.VII, p.185.

824. This view is also held by al-Shafi'i. According to

Abu Hanifah and his companions, marriage contract cannot be voided because of a defect unless the man has a completely damaged penis or is sexually impotent in which case the woman is given the option to either remain married to him or be pronounced divorced once by the hakim. See al-Mughni, vol.VII, p.184.

825. Hence she has the option as long as the husband is not manumitted or has not had sexual relations with her. This view is also held by Malik. According to Abu Hanifah, she is given the option in a session of religious instruction (Majlis al-Ilm). Three views are attributed to al-Shafi'i as in the following: 1) Her option extends until her husband is manumitted or has sexual relations with her. 2) She has an immediate option to exercise. 3) Her option extends to only three days. See al-Mughni, vol.VII, p.193.

826. (D) Note: This view is also held by al-Shafi'i. Abu Bakr holds the view that she may still have the option. This view is based on a report from Ibn Hanbal. See Tabaqat, vol.II, p.101, al-Mughni, vol.VII, p.195, M.W.S.K., vol.VII, p.596.

827. (D) Note here al-Khiraqi's view that is, the wife has the option to void the marriage contract at the time the husband's penis becomes completely damaged and may not wait until the expiration of the one year period of respite. According to Abu Bakr, which is also the view held by Malik, the wife has no option to void the marriage contract due to a physical defect occurring after the marriage has been concluded just as if a merchandise has been found defective after it has been taken possession of. See Tabaqat, vol.II, p.101.

828. This view obviously is based on a report from Ibn Hanbal. However, it seems rather to be pointing to the use of practical method to determine the truth of a matter, probably indicating that such practical techniques if applied at instances where no conflicts are created with the legal principles may at least be acceptable to the Hanbali school.

829. (D) This view which is the second of the two views presented by al-Khiraqi, is also held by al-Shafi'i. According to a third report from Ibn Hanbal, the wife's word is accepted corroborated by her oath. Abu Bakr holds the view that in such a case, a beautiful woman whose marriage portion is paid from the public treasury is married to this man, and both of them are left alone for a while after which time the woman is asked about his sexual condition, and her word is accepted on that. See Tabaqat, vol.II, pp.101-102. al-Mughni, vol.VII, pp.206-207.

830. (D) Abu Bakr holds the view that the hermaphrodite of

indeterminate sex cannot marry until it is determined to which of the two sexes he belongs. Tabaqat, vol.II, pp.102-103; al-Mughni, vol.VII, pp.207-208.

831. Ibn Qudamah points out that marriage portion (sadaq) cannot be accepted unless it has a monetary value (see Qur'an:Surah 4:24) and can also be halved, that is, its half value can be determined and not necessarily halving the object of sadaq itself. He explains that this is so in order for the wife to be able to obtain half of the marriage portion due to her in case she is divorced before the consummation of the marriage. Hence, anything unlawful to sell such as what is forbidden (haram) or is unavailable or unknown (majhul) or has no use, or what has not been taken possession of, or is unattainable cannot be offered as sadaq. al-Mughni, vol.VII, p.217.

832. This view is based on a report from Ibn Hanbal. According to al-Shafi'i she is entitled in such a case, to the marriage portion equivalent to what she is worth. al-Mughni, vol.VII, p.219.

833. The words here are replaced according to Ibn Qudamah's text by the statement <what is forbidden>. See al-Mughni, vol.VII, p.222.

834. (D) al-Khiraqi's view here is that the marriage in this case is still valid. This view is based on a report from Ibn Hanbal. It is also the view held by al-Shafi'i and the rationalists. According to Abu Bakr, the marriage in this case is invalid. According to Malik the marriage is valid if she is divorced after the consummation of the marriage, but it is void if divorced before the consummation of the marriage. al-Mughni, vol.VII, p.223.

835. This apparently is based on a report from Ibn Hanbal which is also the view held by Abu Hanifah. According to another report from Ibn Hanbal which is also the view held by Abu Yusuf, the husband's word is accepted in any case. According to al-Shafi'i both must take an oath. If only one of them takes it, the person's word is taken, but if both of them take it then she becomes entitled to the marriage portion equivalent to what she is worth. According to Malik, if the dispute occurs before the consummation of the marriage both of them must take an oath after which the marriage contract is voided. If it occurs after the consummation of the marriage, the husband's word is accepted. al-Mughni, vol.VII, pp.233-234.

836. This view is also held by al-Shafi'i and the rationalists. According to Malik, if it is denied after the marriage is consummated, the husband's word is accepted. al-Mughni, vol.VII, p.235.

837. Mut'ah here signifies an indemnity payable to the wife who is divorced before consummation when no

marriage portion (sadaq) was stipulated on concluding the marriage contract. Hence, Mut'ah here is distinguished from mut'ah in the sense of temporary marriage. Schacht, Introduction, p.167. See also Qur'an:Surah 2:236. See also note no.820.

838. This is according to a report from Ibn Hanbal. According to a second report from him, the compensation is fixed by the hakim. According to still a third report, it is fixed to equal half of the marriage portion of what she is worth. According to Malik compensation (mut'ah) is never a requirement, but only recommended. Abu Ya'la, Sharh, p.20a (2747). al-Mughni, vol.VII, pp.242-243.

839. That she is entitled to the full marriage portion is apparently based on a report from Ibn Hanbal. According to another report from him, she is only entitled to half of the marriage portion. Both these opinions are also attributed to al-Shafi'i. According to Malik, she is entitled to no marriage portion. al-Mughni, vol.VII, p.246.

840. i.e. the husband is treated as having had sexual relations with his wife, and in which case she is entitled to the full marriage portion, and has the obligation to carry out the 'iddah if required, and so on. Hence, he cannot marry his wife's sister at the same time, and has the right to return to her (raj'ah) while she is in her 'iddah, and so on. According to al-Shafi'i, the spending of time alone with one another (khalwah) does not require the payment of full marriage portion. Abu Ya'la, Sharh, p.31a (2747). See al-Mughni, vol.VII, p.249.

841. See note no.821. See section 35. See also note no.642.

842. Ibn Qudamah's version of the Mukhtasar reads <they are both flogged> which indeed explains here the kind of hadd punishment they are both subjected to. See al- Mughni, vol.VII, p.248.

843. Hence according to this view the woman is entitled to the full marriage portion at all cost. This is according to one of three reports from Ibn Hanbal. 2) She is not entitled to full marriage portion. 3) If they are both fasting for the month of Ramadan she is not entitled to full marriage portion. If fasting for other than Ramadan then she is entitled to full marriage portion. al-Mughni, vol.VII, pp.250-251.

844. This view is also held by the rationalists. It is also according to the new opinion of al-Shafi'i. According to a report from Ibn Hanbal, the marriage tie is in the hands of the wali. This latter view is held by Malik, and it is also according to an old opinion of al-Shafi'i. al-Mughni, vol.VII, p.253.

845. This view is according to a report from Ibn Hanbal.

According to Abu Ya'la, the marriage portion on which the contract is concluded whether offered secretly or publicly, is required.This latter view is also held by Abu Hanifah, Malik and al-Shafi'i. al-Mughni, vol.VII, pp.261-262.

846. This view is also held by al-Shafi'i. According to Abu Hanifah, half of the original sheep may not be claimed from her; instead, half of what they are worth should be claimed. al-Mughni, vol.VII, p.267.

847. According to some al-Shafi'i scholars, it is considered a collective duty (fard Kifa'i). al-Mughni, vol.VII, p.276.

848. According to Ibn Qudamah, earlier generation of Muslims here refers to the Companions of the Prophet. al-Mughni, vol.VII, p.286.

849. Nithar: is the act of scattering or throwing dispersedly anything and particularly fruits, walnuts, almonds, sugar and money etc. on festive occasions. Lane.

850. (D) This is based on a report from Ibn Hanbal. It is also the view held by Malik and al-Shafi'i. According to another report from Ibn Hanbal which is the view held by Abu Bakr and Abu Hanifah, it is not reprehensible. Tabaqat, vol.II, p.103. al-Mughni, vol.VII, p.287.

851. This has only been included in the commentary. See al-Mughni, vol.VII, p.288.

852. This view is also held by al-Shafi'i and the rationalists. According to one of two reports related from Malik, the man's time must be divided equally between the free wife and the slave wife. al-Mughni, vol.VII, p.309.

853. Ibn Qudamah explains in his commentary that the wife is not entitled to all that if she travels with her husband's permission in order to satisfy her personal desires such as if she travels for trading or for visit or to perform voluntary hajj or 'umrah. al-Mughni, vol. VII, p.313.

854. Malik and al-Shafi'i also hold this view. According to Abu Hanifah, there is no difference between the newly wed wife and the old wife, both of them must be treated equally in the spending of time with them. al-Mughni, vol.VII, p.316.

855&856. See Qur'an:Surah 4:34. Also See Qur'an:Surah 4:35.

857. This is according to a report from Ibn Hanbal. It is also the view held by Abu Hanifah and according to one of two opinions of al-Shafi'i. Hence according to this view the two appointed arbiters cannot cause separation between the couple without their permission. According to a second report from Ibn Hanbal, which is also the view held by Malik, the two arbiters are considered as judges (hakiman) who may

make decision on their own of either bringing the couple together or separating between them. _al-Mughni_, vol.VII, p.320.

858. _Khul'_: is the parting of a wife from her husband by which the wife redeems herself from the marriage by giving the husband a certain compensation. Schacht, _Introduction_, p.164.

859. This is according to one of two opinions of al-Shafi'i. _al-Mughni_, vol.VII, p.328.

860. Malik and the rationalists also hold this view. _al-Mughni_, vol.VII, p.328.

861. See al-Sijistani, _Masa'il_, p.179. Also Malik and al-Shafi'i hold this view. According to what is related from Abu Hanifah, she can be affected by an explicit divorce. _al-Mughni_, vol.VII, pp.330-331.

862. (D) See al-Sijistani, _Masa'il_, p.179. The rationalists also hold the view that it is permissible for the husband to accept _khul'_ on the basis of giving him a compensation unknown to him. Abu Bakr holds the view that such a _khul'_ is unacceptable and hence nothing goes to the husband. According to al-Shafi'i, the _khul'_ is valid and the husband is entitled to the marriage portion equivalent to what she is worth. _al-Mughni_, vol.VII, p.333.

863. This is according to one of two reports from Ibn Hanbal. It is also the view held by Malik. According to the second report, _Khul'_ may only be granted on the basis of a payment of compensation to the husband. _al-Mughni_, vol.VII, p.337-338.

864. According to Abu Hanifah, Malik and al-Shafi'i, he is entitled in this case to one-third of the thousand (_dirhams_). Abu Ya'la, _Sharh_, p.38a (2747). _al-Mughni_, vol. VII, p.344.

865. According to Abu Hanifah, the husband is entitled to the full compensation of the _khul'_, and the goodwill shown towards him is paid out of one-third of the wife's estate. Both opinions of al-Khiraqi and Abu Haniah are also attributed to Malik. al-Shafi'i holds the view that it is permissible to grant _khul'_ in return for the marriage portion equivalent to what the wife is worth, but if the compensation to be paid is more than what she is worth, then the excess over what she is worth is borne from one-third. _al-Mughni_, vol.VII, p.356.

866. Ibn Qudamah's version reads "Supposing he grants her _khul'_". See _al-Mughni_, vol.VII, p.356.

867. The words: "and he receives the compensation from her" (_fa-qabadahu_) are based here on Ibn Qudamah's text of the _Mukhtasar_, which seem significantly more accurate than the words: "and she receives it" (_wa qabadat-hu_) as read in al-Shawish's version. See _al-_

Mughni, vol.VII, p.357. Cf al-Shawish, Mukhtasar, p.103. However it should be noted that the statement "wa qabadat-hu" as in al-Shawish's version probably spells "wa qabbadat-hu", meaning "and she pays it to him", which is perfectly meaningful and sensible.

868. According to the school of al-Shafi'i, payment of a marriage portion equivalent to what the woman is worth is required. al-Mughni, vol.VII, p.357.

869. See also Laoust, Precis, p.200. Note that Ibn Hanbal explains that the 'iddah is over after three menstrual cycles have been performed since the time of pronouncing one divorce. This is also the view held by Malik and al-Shafi'i. According to Abu Hanifah, divorce according to sunnah is to pronounce three separate divorces, with each divorce pronounced after the completion of each menstrual cycle. See Abu Ya'la, Sharh, pp.39b-40a (2747). al-Mughni, vol.VII, p.365.

870. (D) al-Shafi'i also holds this view. According to Abu Bakr, based on a report from Ibn Hanbal, and which is also the view held by Abu Hanifah and Malik, it is considered as according to bid'ah (non-sunnah) divorce. Tabaqat, vol.II, p.104. al-Mughni, vol.VII, p.368.

871. bid'ah literally means innovation. Here it signifies the form of divorce that is contrary to the prescribed way (sunnah) of divorce, such as divorcing one's wife in the state of menstrual impurity or in a state of purity in which sexual intercourse has been had with her. See al-Mughni, vol.VII, p.366.

872. See al-Sijistani, Masa'il, p.173.

873. This is according to most reports from Ibn Hanbal. However, according to one report from Ibn Hanbal which is also the view held by Malik, Iraqi and Hijazi scholars, it is acceptable only if the child is of legal age. al-Mughni, vol.VII, pp.380-381.

874. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah, it is acceptable. al-Mughni, vol.VII, p.382.

875. This is according to one of two reports from Ibn Hanbal. According to the other report, it is considered as force. al-Mughni, vol.VII, p.383.

876. Hence these three expressions are considered explicit expressions of divorce. This view is also held by al-Shafi'i. According to Abu Hanifah and Malik, the only explicit expression of divorce is to say: "I have divorced you" (tallaqtuki). al-Mughni, vol.VII, p.385.

877. This is according to one of two reports on this case. According to the other report which is also the view held by Abu Hanifah and al-Shafi'i, it is not binding. al-Mughni, vol.VII, p.389.

878. This view is based on one of two reports from Ibn Hanbal. According to the other report which is also the view held by al-Shafi'i, it is based on the person's intention. al-Mughni, vol.VII, pp.390-391.

879. This is based on a report from Ibn Hanbal. According to the other report from him, if accepted it is considered as three divorces, otherwise one divorce and he still has the right of reconciliation. al-Mughni, vol.VII, p.402.

880. According to Malik, al-Shafi'i and the rationalists the time to exercise the power of divorcing herself extends until the husband physically separates from her. al- Mughni, vol.VII, p.403.

881. al-Shafi'i also holds this view. According to Abu Hanifah, it is considered as one irrevocable divorce. According to Malik, it is considered as three divorces, except that if her marriage is not consummated then it is based on the husband's intention whether for one divorce or two divorces. al-Mughni, vol.VII, p.404.

882. According to Malik and al-Shafi'i, only one divorce is binding on her. However, al-Shafi'i points out further that it is still based on the husband's intention. al-Mughni, vol.VII, p.405.

883. (D) This is also the view held by al-Shafi'i. According to Abu Bakr, in such a case he is considered as having broken his oath of divorce (hanitha), hence she is in this case considered as divorced. See Tabaqat, vol.II, p.104. al-Mughni, vol.VII, p.475.

884. This view is also held by Malik and it is according to an old opinion of al-Shafi'i. According to Abu Hanifah and apparently according to a new opinion of al-Shafi'i, only one divorce becomes binding. Abu Ya'la, Sharh, p.46b (2747). al-Mughni, vol.VII, p.481.

885. Ibn Qudamah explains here that if the husband says: "You are divorced once" then only one divorce is binding, but if he says simply: "You are divorced" and he means three times, there are two reports on this case: 1) Only one divorce is binding. This view is held by the rationalists. 2) Three divorces are binding. This latter view is held by Malik and al-Shafi'i. al-Mughni, vol.VII, p.483.

886. This view is held by the rationalists. According to Malik and al-Shafi'i it is binding on her. al-Mughni, vol.VII, p.492.

887. This has been included only in Ibn Qudamah's commentary. See al-Mughni, vol.VII, p.492.

888. This based on a report from Ibn Hanbal. Malik holds the view that they are all in this case considered divorced. According to Abu Hanifah and al-Shafi'i,

the man has the right in such a case to choose any one of them and pronounce her divorced. al-Mughni, vol.VII, p.496.

889. Most Hanbali scholars hold this view. A report from Ibn Hanbal indicates that the casting of lots cannot be applied here. al-Mughni, vol.VII, p.497.

890. This is based on a report from Ibn Hanbal. According to Abu Hanifah, the estate is divided between them all. According to al-Shafi'i, the division of the estate is suspended until they all reach a peaceful settlement on it. al-Mughni, vol.VII, p.501.

891. This is according to one of two reports from Ibn Hanbal. It is also the view held by Malik, al-Shafi'i and al-Shaybani. According to the other report which is also the view held by Abu Hanifah and Abu Yusuf, she returns like a new wife to him reserving the right of three divorces. al-Mughni, vol.VII, p.505.

892. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah, divorce is considered from the side of the woman; hence a female slave is considered irrevocably divorced if she is pronounced divorced two times only, regardless of whether her husband is a free person or a slave, while a free woman is considered irrevocably divorced if she is pronounced divorced three times only regardless of whether her husband is a free person or a slave. al-Mughni, vol.VII, pp.505-506.

893. Raj'ah: is the reconciling of the husband with his divorced wife in a revocable divorce before the expiration of her 'iddah. M.W.S.K., vol.VIII, p.470. See also Lane.

894. Ibn Qudamah mentions this only as part of his commentary. See al-Mughni, vol.VII, p.519.

895. (D) Hence according to al-Khiraqi's view based on a report from Ibn Hanbal the presence of witnesses is required for the man to return to his wife. This is also according to the most widely known opinion of al-Shafi'i. Abu Bakr, based on the second report mentioned by al-Khiraqi, holds the view that witnesses are not required for a man to return to his wife. This latter view is also held by Abu Hanifah and Malik. See Tabaqat, vol.II, p.105. al-Mughni, vol.VII, pp.522-523.

896. This view is also held by Abu Hanifah and it is also according to one of two opinions of al-Shafi'i. According to the other opinion of al-Shafi'i she has to begin afresh another 'iddah. al-Mughni, vol.VII, p.531.

897. This view is held by most legal scholars including al-Shafi'i and the rationalists. al-Mughni, vol.VII, p.533.

898. Malik also holds this view. See al-Mughni, vol.VII,

p.533.

899. Ibn Qudamah's text conveys that this is an irrevocable divorce, hence the returning of the divorced wife to her former husband and mentioning to him that she had married someone who had sexual intercourse with her before divorcing her. See _al-Mughni_, vol.VII, p.534.

900. This view is also held by al-Shafi'i and the rationalists. However, al-Shafi'i recommends for such a person not to marry her again cautiously. _al-Mughni_, vol.VII, p.534.

901. _Ila'_: is the oath taken by the husband to abstain from having sexual intercourse with his free wife for four months, and with his slave wife for two months. Schacht, _Introduction_, pp.164-165. See _Qur'an_:_Surah_ 2:226.

902. Hence according to the Hanbali school the effectiveness of _ila'_ is conditional upon the husband keeping the oath for over four months. This is also the view held by Malik and al-Shafi'i. According to the rationalists, _ila'_ has the effect of a definite repudiation if the oath is kept for four months or for more than four months. _al-Mughni_, vol.VII, p.538.

903. This view is also held by Malik and al-Shafi'i. According to the rationalists, as soon as four months pass by it is considered as an irrevocable divorce. _al-Mughni_, vol.VII, p.553.

904. (D) This view is also held by al-Shafi'i. According to Abu Bakr, which is also the view held by Abu Hanifah and Abu Ya'la, if the husband returns to her only by word of mouth when he is unable to have sexual intercourse with her the _ila'_ is no longer binding on him and hence he is not liable to return to her another time to actually have sexual intercourse with her when he is able to do so. _Tabaqat_, vol.II, pp.105-106. _al-Mughni_, vol.VII, pp.560-562.

905. This is also the view held by al-Shafi'i. According to another report from Ibn Hanbal, the judge may not divorce on behalf of the husband. Both views have also been attributed to al-Shafi'i. _al-Mughni_, vol.VII, p.563.

906. i.e. the judge has full power of divorce as much as the husband himself who has taken the oath of abstinence from his wife. Hence, the judge may pronounce the wife of the person divorced, once or twice or three times. According to al-Shafi'i, the judge may pronounce divorce on behalf of the husband only one time. _al-Mughni_, vol.VII, p.564.

907. i.e. it is considered as one divorce as per the pronouncement of the judge, and the husband has the right to return to his wife. According to another

report from Ibn Hanbal, the judge's pronouncement of divorce is considered as an irrevocable divorce which leaves no chance for reconciliation. al-Mughni, vol.VII, p.564.

908. This view is also held by Malik. According to Abu Hanifah, if she is pronounced divorced less than three separate divorces and she completes her 'iddah after which he remarries her, the ila' is still binding unless the divorces have already amounted to three (separate) divorces in which case the ila' no longer becomes binding. al-Mughni, vol.VII, pp.566-567.

909. (D) This view is also held by al-Shafi'i. According to Abu Bakr, the taking of an oath here is not required. This latter view is also held by Abu Ya'la. Tabaqat, vol.II, pp.104-105. al-Mughni, vol.VII, p.567.

910. Zihar: was an old form of repudiation which Islam does not recognize as such. It is pronounced by the use of the formula: "You are for me as the back of my mother" or the like. Such a pronouncement by the husband does not dissolve the marriage, but is regarded as an impious declaration requiring a heavy kaffarah. Schacht, Introduction, p.165. See Qur'an:Surah 58:2-4; 33:4.

911. See Qur'an:Surah 58:3-4

912. This view is also held by Malik. According to Abu Hanifah and al-Shafi'i, zihar is not binding on a person if it is pronounced before the woman is married to him. see al-Mughni, vol.VIII, p.18.

913. (D) Hence, according to al-Khiraqi's view, kaffarah of zihar is still binding on the man before sexual inter- course is had. This view is also held by Malik, al- Shafi'i, the rationalists, Abu Ya'la and Ibn Hamid. According to Abu Bakr in such a case kaffarah of zihar is no longer binding. However, kaffarah of oath is required if sexual intercourse is had with her. Tabaqat, vol.II, p.106. al-Mughni, vol.VIII, pp.19-20.

914. This view is also held by Malik, and it is according to an old opinion of al-Shafi'i. According to the rationalists and a new opinion of al-Shafi'i, kaffarah is binding separately for each of the four women. al- Mughni, vol.VIII, p.20.

915. (D) This view is also held by Malik and al-Shafi'i, which apparently is based on a report from Ibn Hanbal. According to another report from Ibn Hanbal which is the view held by Abu Bakr and Abu Hanifah the slave to be manumitted does not have to be a believing slave. Tabaqat, vol.II, p.106. al-Mughni, vol.VIII, p.22.

916. This view is also held by Malik and the rationalists.

According to a report from Ibn Hanbal which is also the view held by al-Shafi'i, in such a case fasting may not be restarted, rather it is continued based on how many days already have been fasted. Abu Ya'la, Sharh, p.59a (2747). al-Mughni, vol.VIII, pp.28-29.

917. This view is also held by al-Shafi'i. According to Malik, two mudds of all kinds of food may be offered. According to the rationalists, two mudds of wheat may be offered, or one Sa' of dates or of barley may be offered to each needy person. al-Mughni, vol.VIII, pp.30-31.

918. al-Shafi'i also holds this opinion. According to another opposing report from Ibn Hanbal which is also the view held by Abu Hanifah, it is not acceptable. al-Mughni, vol.VIII, p.33.

919. Dhu'l Hijjah: is the twelfth lunar month in which the pilgrimage rites and the feast of sacrifice are completed particularly the 10th, 11th 12th and 13th of it. See note no.278.

920. According to al-Shafi'i, in such cases the condition to fast two successive months is considered as having been broken, hence the fast must be started all over again. al-Mughni, vol.VIII, p.36.

921. (D) This view is also held by Abu Hanifah and al-Shafi'i. According to another report from Ibn Hanbal, kaffarah may be performed by the payment of money if the slave is permitted by the master to do so, which indicates that it is permissible for the slave to perform the kaffarah by feeding the poor. Hence Abu Bakr holds the view that it is as well permissible for the slave to perform the kaffarah by the manumitting of a slave. al-Mughni, vol.VIII, p.38.

922. This view is also held by Malik, and it is also according to an old opinion of al-Shafi'i. According to the rationalists, if the pronouncement is repeated at one session, only one kaffarah is required, but if repeated at more than one session then more kaffarahs are required accordingly. al-Mughni, vol.VIII, p.43.

923. Li'an: is the process whereby the husband affirms under oath that his wife has been unfaithful to him by committing adultery, and the wife affirms also under oath the contrary. Hence the marriage between them is dissolved. Schacht, Introduction, p.165. See also note no.739.

924. (D) This is according to a report from Ibn Hanbal. It is also the view held by the rationalists. According to another report from Ibn Hanbal, which is also the view held by Abu Bakr and Malik, the marriage is considered dissolved just after they have both undergone the process of li'an. According to al-Shafi'i, the marriage is considered dissolved just after the husband alone has undergone the process of

li'an. al-Mughni, vol.VIII, pp.63-64.

925. (D) This view is also held by Abu Ya'la and al-Shafi'i. According to Abu Bakr, there is no need to mention or disclaim the child. Tabaqat, vol.II, p.107. al-Mughni, vol.VIII, p.69.

926. This view is also held by Abu Hanifah. According to Malik and al-Shafi'i, pregnancy may be disclaimed before delivery. al-Mughni, vol.VIII, p.75.

927. (D) Abu Hanifah also holds this view. According to another report which is also the view held by Abu Bakr, al-Shafi'i, Ibn Hamid and Abu Ya'la, li'an may be carried out by the man in this situation. Tabaqat, vol. II, pp.107-108. al-Mughni, vol.VIII, p.78.

928. See Qur'an:Surah 24:6-9.

929. See note no.925.

930. The rationalists also hold this view. According to Malik and al-Shafi'i, she is liable to hadd. al-Mughni, vol.VIII, p.93.

931. This is according to one of two reports mentioned by Ibn Hamid on this case. Hence according to this view the woman is still considered in the state of 'iddah and can be returned to by her husband until she performs her ritual bath. According to the other report, the 'iddah is considered over just after completing her third menstrual cycle and before the performing of the ritual bath. al-Mughni, vol.VIII, pp.103-104.

932. (D) This is according to one of three reports from Ibn Hanbal on this case. It is also according to an opinion of al-Shafi'i. According to a second report which is also the view held by Abu Bakr, the rationalists and also according to a second opinion of al-Shafi's, her 'iddah is one and a half months. According to a third report which is the view held by Malik and also according to a third opinion of al-Shafi'i, her 'iddah is three months. al-Mughni, vol.VIII, p.106.

933. The rationalists also hold this opinion and it is also according to one opinion of al-Shafi'i. According to Malik and a second opinion of al-Shafi'i, she must complete her 'iddah as a female slave does, whether her divorce is revocable or irrevocable. According to a third opinion of al-Shafi'i, she must complete her 'iddah in all cases as a free woman does. al-Mughni, vol.VIII, p.108.

934. Malik also holds this view and it is also according to one opinion of al-Shafi'i. Hence, according to this view she must wait for nine months to clear herself up from pregnancy and then carry out three months 'iddah for the actual divorce. According to another opinion of al-Shafi'i, she must wait for four years the maximum term of pregnancy and then carry

out three months ʿiddah for the actual divorce. According to the most recent opinion of al-Shafiʿi, she must continue to wait until she resumes her menstrual cycle or reaches the age of having no expectation of menstruation and then carry out three months ʿiddah. al-Mughni, vol.VIII, pp.109-110.

935. Apparently, the Hanbali school accepts four years to be the maximum term of pregnancy. This view is also held by Malik and al-Shafiʿi. However, another report from Ibn Hanbal states that the maximum term is two years; and this view is also held by Abu Hanifah. Some scholars say, the maximum is three years, and others say it has no fixed term. al-Mughni, vol.VIII, p.121. See also Schacht, Origins, p.225.

936. According to another report from Ibn Hanbal the second husband is permanently prohibited from marrying her. This view is also held by Malik and it is according to an old opinion of al-Shafiʿi. According to a new opinion of al-Shafiʿi, he may marry her after she has completed her ʿiddah for the first husband. al-Mughni, vol.VIII, p.125.

937. This is based on a widely known opinion of Ibn Hanbal. It is also the view held by Malik and al-Shafiʿi. According to another report from Ibn Hanbal, she must carry out an ʿiddah of four months and ten nights. The rationalists hold the view that she must carry out an ʿiddah of three menstrual cycles. al-Mughni, vol.VIII, p.140.

938. This is based on a widely known opinion of Ibn Hanbal. According to another report from him, one month is the waiting period. al-Mughni, vol.VIII, p.142.

939. This is according to one of two reports from Ibn Hanbal. According to the second report, she must carry out the ʿiddah for nine months to free herself from pregnancy and then wait for another three months in place of three menstrual cycles. al-Mughni, vol.VIII, p.143.

940. This view is also held by al-Shafiʿi. According to the rationalists she does not have to undergo one monthly cycle before she is married to another man. al-Mughni, vol.VIII, p.145.

941. This view is based on a report from Ibn Hanbal. It is also held by the rationalists. According to another report from Ibn Hanbal, it is not obligatory on her to do so. al-Mughni, vol.VIII, p.164.

942. This is based on one of three reports from Ibn Hanbal. It is also the view held by al-Shafiʿi. 2. Any amount of suckling whether little or much makes marriage unlawful. This view is held by Malik and the rationalists. 3. Only three sucklings make marriage unlawful. al-Mughni, vol.VIII, pp.171-172.

943. (D) This view is also held by Malik and the rationalists. Abu Bakr holds the view that feeding through the nose or pouring the milk into the mouth does not make marriage unlawful. Tabaqat, vol.III, p.108. al-Mughni, vol.VIII, p.173.

944. (D) This view is also held by al-Shafi'i. According to Abu Bakr, Ibn Hanbal's statement points out that it does not make marriage unlawful. Ibn Hamid holds the view that it makes it unlawful only if the adulterated product consists mostly of milk. The rationalists also have similar view as Ibn Hamid's. al-Mughni, vol.VIII, p.175.

945. This view is also held by Abu Bakr and the rationalists. According to Abu Bakr's master al-Khallal, the milk from the dead does not make marriage unlawful. This latter view is also held by al-Shafi'i. Abu Ya'la, Sharh, p.76a (2747). al-Mughni, vol.VIII, pp.175-176.

946. (D) al-Khiraqi's statement here implies that the milk acquired by the woman out of wedlock and which is used to suckle the child does not make marriage unlawful between the woman and the child. This view is also held by al-Shafi'i and Ibn Hamid. On the contrary, Abu Bakr holds the view that it still makes it unlawful. This latter view is also held by Abu Ya'la. Tabaqat, vol.II, pp.103-104. al-Mughni, vol.VIII, pp.178-179.

947. This is based on one of two reports on this case. According to the other report, the minor's marriage is void. This latter view is held by Abu Hanifah and al- Shafi'i, both of whom also hold the view that the adult's marriage is as well void, because both wives in this case become a mother and a daughter married together to the same man which is unlawful. al-Mughni, vol.VIII, p.183.

948. This is referring to another report of Ibn Hanbal which is based on the case of a woman who claimed she suckled a man and his wife, and Ibn Abbas said: "If she speaks the truth, she must take an oath and the man be separated from her, but if she lies her breasts may turn white before a year passes by". Ibn Qudamah explains what that means by pointing out that the woman's breast may be infected with leprosy if she is a liar as a punishment for lying. See al-Mughni, vol.VIII, p.191.

949. Ibn Abbas: ('Abd-Allah bin al-Abbas) a Companion and a cousin of the Prophet, and considered the father of Qur'anic exegesis. He was called al-Hibr (the doctor) or al-Bahr (the sea) because of his doctrine. Born three years before the Hijrah and once appointed governor of Basra. Some scholars say he was born in the second year before the Hijrah. He died in Ta'if

68/686-8. EI[2] under 'Abd-Allah bin al-Abbas. See also 'Armush, Muwatta', p.726.

950. Note here al-Khiraqi's view. It is strictly based on legality, and not on the actual fact of the matter; hence the attributing of complete knowledge to Allah. The marriage in this case is legally considered valid according to al-Khiraqi, and cannot be voided without her presenting evidence that he is her foster-brother.

951. He was Abu Sufyan bin Harb bin Umayyah a prominent Meccan merchant and financier. His wife was Hind bint 'Utbah bin Rabi'ah divorced in the end by Abu Sufyan. Both of them were parents of Mu'awiyah bin Abi Sufyan once a governor of Syria and the first Umayyad Caliph. See EI[2] under Abu Sufyan, and under Hind bint Utba. See also al-Shawish, Mukhtasar, p.113. 952.

952. See al-Bukhari, Kitab buyu', bab no.95; Muslim, Kitab Aqdiyah, hadith no. 7; Abu Dawud, Kitab buyu', bab no.79 Ibn Hanbal, vol.6, p.39 .

953. Malik and al-Shafi'i also hold this view. According to Abu Hanifah, Abu Yusuf and al-Shaybani, she cannot demand separation, but the husband must allow her to work for her living. al-Mughni, vol.VIII, p.204.

954. This view is also held by Abu Hanifah. According to al- Shafi'i the grandfather must provide all the maintenance. al-Mughni, vol.VIII, p.219.

955. Malik, al-Shafi'i and the rationalists all hold the view that it is not obligatory to provide such a maintenance. Abu Ya'la, Sharh, p.82a (2747). al-Mughni, vol.VIII, p.222.

956. This view is also held by Abu Hanifah, and it is according to one of two opinions of al-Shafi'i. According to another opinion of al-Shafi'i which is also the view held by Malik, she is not entitled to any maintenance. al-Mughni, vol.VIII, p.229.

957. This view is based on one of two reports concerning a non-pregnant woman. According to the other report, she is entitled to accommodation. al-Mughni, vol.VIII, pp.232-233.

958. Legal scholars including Malik and Shafi'i and the rationalists hold the view that neither maintenance nor accommodation is due to a woman disobedient toward her husband. However, there is a minority opinion that she is entitled only to maintenance. This case here pertains to a non-pregnant woman. However, in the case of a pregnant woman she is entitled to maintenance. See Qur'an:Surah 65:6. Abu Ya'la points out that Ibn Hanbal has two views on the providing of maintenance to the pregnant woman. 1) Maintenance is due for herself. 2) Maintenance is due for the pregnancy. Abu Ya'la, Sharh, p.84b (2747). al-Mughni, vol.VIII, p.236.

959. This view is also held by al-Shafi'i. According to Abu Hanifah, the child is not given an option, rather the father is most entitled to the custody of the child if the child is able to do things essentially for himself. According to Malik, the mother is most entitled to the custody until the child develops teeth. Abu Ya'la, Sharh, p.85a (2747). al-Mughni, vol.VIII, p.239.

960. al-Shafi'i holds the view that at this age she is given the option to choose between her parents just as the little boy at the same age is given the option. According to Abu Hanifah, the mother is most entitled to her until she is given to marriage or until she starts her monthly period. According to Malik, the mother is most entitled to her until she is given to marriage or until her marriage is consummated. Abu Ya'la, Sharh, p.85b (2747). al-Mughni, vol.VIII, p.241.

961. Abu Hanifah holds the view that the uterine sister has more rights than the consanguine sister. M.W.S.K., vol. IX, p.308.

962. This is according to one of two opinions of al-Shafi'i. According to Abu Hanifah and Malik, the master cannot be compelled to arrange marriage for the slave. al-Mughni, vol.VIII, p.254.

963. According to al-Shafi'i, the person is not entitled to any reimbursement, because the expense was incurred voluntarily and not obligatorily. Abu Ya'la, Sharh, p.87b (2747). al-Mughni, vol.VIII, p.257.

964. Most scholars including al-Shafi'i and the rationalists hold this view. Malik recognizes only two ways of causing death: with intent, and by accident. al-Mughni, vol.VIII, p.260.

965. See section 39.2.

966. 'Aqilah: is the group of person jointly responsible for the payment of blood money on behalf of a person who has committed unintentional homicide or inflicted bodily harm on another person. See El[2] under 'akila.

967. Rum is the name in Persian and Turkish for the Byzantine empire. It means the land of the Rhomaeans or Byzantines. See El[1] under Rum. Note that it stands here for all enemy (non-Muslim) territories. See al-Shawish, Mukhtasar, p.116. M.W.S.K., vol.IX, p.340.

968. According to another report from Ibn Hanbal, the killer must pay blood money in addition to performing kaffarah. This view is also held by Malik and al-Shafi'i. al-Mughni, vol.VIII, p.273.

969. See Qur'an:Surah 4:92.

970. This is the view of most scholars including Malik and al-Shafi'i. According to the rationalists, a Muslim may be put to death for killing a dhimmi specifically. According to Abu Hanifah, a Muslim may

be put to death for killing a non-Muslim. Abu Ya'la, Sharh, p.90a (2747). al-Mughni, vol.VIII, p.273.

971. Malik and al-Shafi'i also hold this view. The rationalists hold the view that a free person may be put to death for killing a slave. Abu Ya'la, Sharh, p.90a (2747). al-Mughni, vol.VIII, p.278.

972. al-Shafi'i and the rationalists also hold this view. According to Malik if the child is killed as a result of throwing a sword or a similar object at him, there is no retaliation; but if slaughtered or killed in a manner that leaves no doubt in the mind that the father deliberately intends to kill instead of disciplining the child, then the father is put to death. Abu Ya'la, Sharh, p.91a (2747). See also al-Mughni, vol.VIII, p.285.

973. Ibn Qudamah points out that this is indeed the view upheld by the Hanbali school. However, he mentions that another report from Ibn Hanbal indicates that the mother is exempted from being put to death if she kills her child. See al-Mughni, vol.VIII, p.286.

974. According to another report from Ibn Hanbal, the son cannot be put to death for killing his father. al-Mughni, vol.VIII, p.289.

975. This apparently is based on a report from Ibn Hanbal. According to another report from him, a group of people can not be put to death for killing one person. They all must pay blood money in this case. al-Mughni, vol.VIII, p.290.

976. This view is also held by Malik and al-Shafi'i. According to the rationalists, both hands cannot be cut in retaliation for cutting one hand. This latter view apparently is in accordance with the understanding, based on a report from Ibn Hanbal, that a group of people cannot be put to death for killing one person. See al-Mughni, vol.VIII, p.292. See also Abu Ya'la, Sharh, p.92a (2747). See also note no.975.

977. Malik and al-Shafi'i also hold this view. According to another report from Ibn Hanbal which is also the view held by the rationalists, none of them is put to death in retaliation. Abu Ya'la, Sharh, p.92a (2747). al-Mughni, vol.VIII, p.294.

978. This view is also held by Abu Hanifah and his companions, and it is also according to one of two opinions of al-Shafi'i. According to another report from Ibn Hanbal, the adult and sane in mind is put to death. This latter view is also related from Malik and it is also according to the second opinion of al-Shafi'i. al-Mughni, vol.VIII, p.295.

979. Malik and al-Shafi'i also hold this view. According to Abu Hanifah there is no retaliation in respect to the limbs of two unequals. Abu Ya'la, Sharh, p.93a

(2747). al-Mughni, vol.VIII, pp.296-297.

980. This view is also held by al-Shafi'i and the rationalists. According to another report from Ibn Hanbal which is also the view related from Malik, retaliation is binding on the person who is a part of it through deliberate intent. Abu Ya'la, Sharh, p.93b (2747). al-Mughni, vol.VIII, p.297.

981. This view is also held by Malik, al-Shafi'i and Abu Yusuf. According to Abu Hanifah and al-Shaybani, the blood money for a slave cannot be equal to that of a free person. Abu Hanifah explains that it is a dinar or ten dirhams less than that of a free person. Abu Ya'la, Sharh, p.93b (2747). al-Mughni, vol.VIII, p.299.

982. The second report here agrees with the views held by Abu Yusuf and al-Shaybani. al-Mughni, vol.VIII, p.301.

983. The second report here agrees with the views held by Abu Hanifah, Malik and al-Shafi'i. al-Mughni, vol.VIII, p.301.

984. Ibn Qudamah mentions this as part of his commentary. See al-Mughni, vol.VIII, p.309.

985. (D) This view is also held by al-Shafi'i, Ibn Hamid and Abu Ya'la. According to Abu Bakr and Abu Hanifah, retaliation is binding in this case. Tabaqat, vol.II, pp.108-109. al-Mughni, vol.VIII, p.309. Abu Ya'la, Sharh, p.95a (2747).

986. Abu Hanifah and Malik hold the view that only the person may be put to death in retaliation for all of them and nothing more. According to al-Shafi'i, only the killer may be put to death for one person regardless of whether or not they all decide to retaliate. Abu Ya'la, Sharh, p.95b (2747). al-Mughni, vol.VIII, p.314.

987. This view is also held by al-Shafi'i and Abu Yusuf. According to another report from Ibn Hanbal which is also the view held by Abu Hanifah and Malik, adults and the sane may carry out the retaliation. al-Mughni, vol.VIII, p.349.

988. al-Shafi'i also holds this view, and it is also according to a report from Malik. According to Abu Hanifah and apparently another view of Malik, the heirs are only entitled to killing in return unless a peaceful settlement on blood money is reached with the perpetrator of the crime. Abu Ya'la, Sharh, p.97b (2747). al-Mughni, vol.VIII, p.360.

989. This is based on one of two reports from Ibn Hanbal. According to the other report from him, which is also the view held by Malik, the holder is also put to death. According to Abu Hanifah and al-Shafi'i, the holder is penalized but not put to death. al-Mughni, vol.VIII, p.364.

990. al-Khiraqi mentions here non-Arab, probably because there was a great chance during his time of such a person being unaware that killing is legally forbidden since the person could not read or understand the Arabic of the Qur'an wherein killing of a human being, except in the course of justice, is strictly forbidden as in the following readings: Qur'an:Surah 4:29, 92-93; 5:32; 6:151; 17:33.

991. According to another report from Ibn Hanbal, the master is put to death while the slave is detained until death. Another opinion states that they are both put to death. According to still another opinion, the master is not put to death but punished and detained. al-Mughni, vol. VIII, p.365.

992. This, according to the Hanbali school, is equivalent to one thousand dinars or twelve thousand dirhams. See al-Mughni, vol.VIII, p.370.

993. (D) This view is also held by al-Shafi'i and the rationalists. Abu Bakr holds the view that the blood money in this case is not borne by the 'aqilah but rather paid from the murderer's property. Tabaqat, vol. II, p.109. M.W.S.K., vol.IX, p.491.

994. Malik also holds this opinion. Abu Hanifah holds the opinion that the blood money for the slave is borne by the 'aqilah. Two opposing views as mentioned here are also related from al-Shafi'i. al-Mughni, vol.VIII, p.382.

995. Malik also holds this opinion. According to al-Shafi'i, the 'aqilah may bear whatever amounts to more or less than one-third. al-Mughni, vol.VIII, p.384.

996. (D) According to Abu Bakr which is also the view held by Malik, the owner has the option to either redeem the slave by whatever amount the crime is worth or to give the slave up for sale. Two opposing views as noted here are also related from al-Shafi'i. Tabaqat, vol.II, p.109. al-Mughni, vol.VIII, pp.388-389.

997. (D) Hence according to this view, which is also the view held by al-Shafi'i, the father, son and brothers are not included. According to Abu Bakr, which is also the view held by Abu Hanifah, Malik and Abu Ya'la, the paternal parents of the killer, male children, brothers and every agnatic heir are all part of the 'aqilah. Tabaqat, vol.II, p.110. al-Mughni, vol.VIII, pp.390-391.

998. This report is what Abu Bakr's view is based on. See note no.997.

999. This based on one of two reports on this case. This is also the view held by al-Shafi'i. According to the other report, it does not have to be paid from the public treasury. al-Mughni, volVIII, p397

1000. Malik also hold this view al-Shafi'i holds the view

that it is equivalent to four thousand dirhams According to Abu Hanifah, it is the same as the blood money of a Muslim. al-Mughni, vol.VIII, p.399.

1001. This statement has only been mentioned as part of Ibn Qudamah's commentary. See al-Mughni, vol.VIII, p.400.

1002. Malik and al-Shafi'i hold this view. According to Abu Hanifah, it is the same as the blood money of a Muslim. Abu Ya'la, Sharh, p.103a (2747). al-Mughni, vol.VIII, p.401.

1003. Malik also holds this view, and it is also according to an old opinion of al-Shafi'i. According to Abu Hanifah and his companions, and according to a new opinion of al-Shafi'i, what is due for the injury of a woman is half of what is due to a man regardless of the amount of the blood money. Abu Ya'la, Sharh, p.103b (2747). al-Mughni, vol.VIII, p.402.

1004. See note no.981. See end of section 39.1.

1005. ghurrah: is the indemnity for causing an abortion. It is estimated as one-twentieth of the blood money which is equivalent to five camels. Schacht, Introduction, p.124. al-Mughni, vol.VIII, p.408.

1006. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah and his companions, in the case of a male fetus one-twentieth of what he is worth is paid as indemnity, and in the case of a female fetus one-tenth of what she is worth is paid. al-Mughni, vol.VIII, p.410.

1007. Malik and al-Shafi'i hold this view. According to Abu Hanifah, kaffarah is not required. Abu Ya'la, Sharh, p.105a (2747). al-Mughni, vol.VIII, p.417.

1008. al-Shafi'i and the rationalists hold this view. According to what is related from Malik, ijtihad must be performed to determine how much of the blood money is due for the eye lids. al-Mughni, vol.VIII, p.440.

1009. Abu Hanifah also holds this view. According to Malik and al-Shafi'i, hukumah becomes due; i.e. the penalty for the loss which is estimated by how much the loss in question would reduce the value of a slave, and the corresponding percentage of the blood money paid. See al-Mughni, vol.VIII, p.443.

1010. al-Shafi'i holds the view that hukumah is due in this case. al-Mughni, vol.VIII, p.466.

1011. This view is based on a report from Ibn Hanbal. According to another report from him which is also the view held by Malik and al-Shafi'i hukumah is due in each case. al-Mughni, vol.VIII, pp.466-467.

1012. This statement here appears to be a repetition of what has already been mentioned in Section 40.1. See al- Shawish, Mukhtasar, p.119. See also note no.1003.

1013. 'Ammah and ma'mumah are two terms representing the same fracture that ruptures the skin of the brain. Iraqis use the term 'Ammah whilst Hijazis use the

term Ma'mumah. See al-Mughni, vol.VIII, p.473.

1014. Abu Hanifah also holds this view in respect to the minor wife. According to al-Shafi'i, she is liable to the payment of full blood money regardless of whether she is a minor or an adult. al-Mughni, vol.VIII, pp.476-477. Abu Ya'la, Sharh, p.109b (2747).

1015. According to Abu Hanifah, Malik and al-Shafi'i, hukumah is due in this case. al-Mughni, vol.VIII, p.479.

1016. This has only been mentioned in the commentary. See al-Mughni, vol.VIII, p.480.

1017. Hukumah: is the estimation made to determine the corresponding percentage of the blood money to be paid which is calculated by how much the bodily harm in question would reduce the value of a slave. See Schacht, Introduction, p.186. See also no. no.1009.

1018. This view is also held by the rationalists. According to al-Shafi'i, half the blood money of a female is required. al-Mughni, vol.VIII, p.486.

1019. Qasamah: is an ancient procedure, a kind of compurgation by which a murder suspect is put to death on the strength of the affirmatory oath of the next of kin of the victim. Schacht, Introduction, p.24.

1020. Note that there are two reports from Ibn Hanbal on when neither animosity nor malice exist. 1) The accused is not required to take the oath. 2) The oath is demanded from the accused; and this view is held by al-Shafi'i. See al-Mughni, vol.VIII, p.490.

1021. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah and his companions, if the inhabitants of a quarter are accused of murder, then the next of kin has the right to demand from fifty men of that place to swear fifty oaths that they have not killed him and do not know who has killed him. Should they refuse to swear, they are imprisoned until they do. They are then freed from liability to retaliation but must, as 'aqilah, pay the blood money. al-Mughni, vol.VIII, pp.488-489.

1022. This view is also held by Malik and al-Shafi'i. According to another report from Ibn Hanbal, which is also the view held by the rationalists, the accused persons take the oath and pay the blood money. al-Mughni, vol.VIII, p.500.

1023. This view is also held by the rationalists. According to Malik, this is considered as malice. al-Mughni, vol.VIII, p.501.

1024. Malik holds the view that women perform it if it relates to killing by accident but not to intentional killing. According to al-Shafi'i every adult heir may take the oath. He also holds the view that children perform qasamah if it relates to killing by accident

but not to intentional killing. Abu Ya'la, Sharh, p.114a (2747). al-Mughni, vol.VIII, p.502.

1025. This is a mathematical division. The oath is divided among the male heirs of the victim based on their shares. See M.W.S.K., vol.X, p.27.

1026. This view is also held by al-Shafi'i and the rationalists. According to Malik, there is no qasamah if the victim is a slave. al-Mughni, vol.VIII, p.507.

1027. See Qur'an:Surah 25:68.

1028. (D) This view is also held by al-Shafi'i. According to another report which is the view held by Abu Bakr, Abu Hanifah, Malik, Ibn Hamid and Abu Ya'la, kaffarah is not required. Tabaqat, vol.II, p.110. (see note on kaffarah in section 50.1).

1029. (D) This is also the view held by al-Shafi'i. According to Abu Bakr, the testimony of women in this case is not accepted. Tabaqat, vol.II, p.111. al-Mughni, vol.VIII, pp.517-518.

1030. Rebels are those who, though they are Muslims, refuse to obey the Imam and oppose by revolts against the Imam who is the lawful head of the State. Such people are fought only to reduce them to obedience, and are to be fought as clemently as possible. Typical of such rebels are those who rebelled against Uthman bin Affan and 'Ali bin 'Abi Talib. See Schacht, Introduction, p.187. See also M.W.S.K., vol.X, p.53. According to Ibn Qudamah, if after forcefully taking control over the State, a person is recognized as the Imam (head of State), he cannot be rebelled against, such as the case with Abdul-Malik bin Marwan who attacked Ibn Zubayr, killed him and took control over the cities and the people. See al-Mughni, vol.VIII, pp.526-527. M.W.S.K., vol.X, p.53.

1031. Malik and al-Shafi'i also hold this view. According to the rationalists, they are only prayed over if they do not have their own people to pray over them. al-Mughni, vol.VIII, p.535.

1032. This view is also held by al-Shafi'i. According to Abu Hanifah his decision is not at all acceptable. al-Mughni, vol.VIII, pp.537-538.

1033. Malik and al-Shafi'i also hold this view. According to Abu Hanifah, female apostate may not be killed, instead she is compelled to return to Islam by putting her in prison or scourging her. al-Mughni, vol.IX, p.3.

1034. This view apparently is based on one of three reports from Ibn Hanbal. 2) The estate is inherited by the person's heirs who must be Muslims. 3) The estate goes to the person's close relatives who share the same religion with the apostate. al-Mughni, vol.IX, p.9.

1035. Abu Hanifah and his companions also hold this view.

According to al-Shafi'i, a child's Islam is not valid until the child is legally mature. al-Mughni, vol.IX, p.13.

1036. Hence in this case, if the child apostatizes the apostasy is valid. This view is also held by Abu Hanifah, and apparently the school of Malik. According to al-Shafi'i, neither the child's Islam nor his apostasy is valid. According to a report from Ibn Hanbal, his Islam is valid but not his apostatizing. Ibn Qudamah points out that a report from Ibn Hanbal indicates that the child's statement is accepted and hence he is not compelled to return to Islam. al-Mughni, vol.IX, pp.15-16. Abu Ya'la, Sharh, p.118b (2747).

1037. Dar al-Harb (literally, abode of war): are territories under perpetual threat of a missionary war as opposed to those territories where peace and the faith of Islam reigns (Dar al-Islam, or abode of peace). Classically the Dar al-Harb includes those countries where the Muslim law is not in force. See El^2 under Dar al-Harb, Dar al-Islam.

1038. This view is also held by al-Shafi'i. According to the rationalists, if both parents or one of them accepts Islam and the child refuses to practice Islam after becoming an adult, then the child is compelled to practice it but not put to death. Malik holds the view that infants follow their father only if he becomes a Muslim, and not their mother. Abu Ya'la, Sharh, p.119b (2747). al-Mughni, vol.IX, p.18.

1039. Ibn Qudamah points out that most legal scholars,(fuqaha') hold the view that the child is not legally considered Muslim upon the death of both parents or one of them. al-Mughni, vol.IX, p.19.

1040. This view is based on one of two reports from Ibn Hanbal. It is also the view held by al-Shafi'i. According to a second report from Ibn Hanbal which is also the view held by Abu Hanifah, apostatizing in the state of intoxication is invalid. al-Mughni, vol.IX, pp.25-26. Abu Ya'la, Sharh, p.120b (2747).

1041. The epithet muhsan (f.muhsanah) is applicable only to free persons. It has two strictly different meanings as in the following: 1) Muhsan in the sense of a free person who has never committed unlawful intercourse (zina). 2) Muhsan in the sense of a free person who has concluded and consummated a valid marriage with a free partner. See Schacht, Introduction, p.125. Note the usage here which is in the latter sense.

1042. Stoning to death of the muhsan who commits adultery is a law agreed upon by all legal scholars of all times except the Kharijites who hold the opinion that both the virgin and non-virgin are only flogged if illegal intercourse is committed. See al-Mughni,

vol.IX, p.35.

1043. This latter view is held by Malik, al-Shafi'i and therationalists. al-Mughni, vol.IX, p.37. 1044.Malik holds the view that a person put to death in fulfillment of hadd by the Imam cannot be prayed over. al-Mughni, vol.IX, p.42.

1045. This view is also held by al-Shafi'i and Malik except that Malik opines that a woman cannot be banished. Ibn Qudamah here endorses Malik's opinion. According to Abu Hanifah and al-Shaybani, banishment is not at all required for all males and females. al-Mughni, vol.IX, pp.43-44.

1046. This understanding is based on the Qur'anic injunction. See Qur'an:Surah 4:25.

1047. Malik also holds this view. According to another opposing view held by Abu Thawr (d.240/854) the slave is banished for half a year. Both these views are also attributed to al-Shafi'i. al-Mughni, vol.IX, p.50.

1048. Hence according to the Hanbali school, there is hadd punishment for the Sodomite. According to Malik, Abu Yusuf, al-Shaybani and to the most well known of the two opinions of al-Shafi'i, whether virgin or non-virgin the Sodomite is stoned to death. According to Abu Hanifah, no hadd punishment is required. al-Mughni, vol.IX, pp.60-61.

1049. This view is based on a report, which is also held by Malik, the rationalists and al-Shafi'i. According to another report from Ibn Hanbal, such a person is treated the same as the Sodomite. al-Shafi'i holds, apparently, another opinion that the person is put to death, and points out in another place, according to Abu Ya'la, that he is punished as one who has committed unlawful intercourse. A virgin is flogged, and a non-virgin is stoned to death. Abu Ya'la, Sharh, p.123b (2747). al-Mughni, vol.IX, p.62.

1050. This view is also held by the rationalists. According to Malik and al-Shafi'i, one confession is enough for the execution of the punishment. al-Mughni, vol.IX, p.64.

1051. (D) This view is based on one of three reports from Ibn Hanbal. According to a second report, which is the view held by Abu Bakr, the person is liable to hadd punishment. Similar opinion is held by Malik. According to a third report, if it is said in a state of anger then the person is liable to hadd punishment but not if it is said otherwise. Tabaqat, vol.II, p.116. al-Mughni, vol.IX, pp.87-88. Note that the people of Lot were not only disbelievers, but were also persistent in sinful acts and misconduct such as lack of hospitality and homosexual practices. Hence they were punished and their sinful city utterly

devastated. See El[2] under Lut.

1052. This view is also held by Malik, Abu Yusuf and al-Shaybani. According to Abu Hanifah, no hadd punishment is required for that. al-Mughni, vol.IX, p.87.

1053. Abu Hanifah, Malik and al-Shafi'i all hold the view that in this case, the slanderer is no longer liable to hadd. al-Mughni, vol.IX, p.93.

1054. al-Mula'anah: is the woman who has undergone the process of li'an because she has been accused by her husband of committing adultery. See note. no.923.

1055. (D) This view is also held by Abu Ya'la. According to Abu Bakr, which is also the view held by the rationalists, no hadd punishment is required for the slandering of a deceased person absolutely. According to al-Shafi'i, if the slandered deceased person was a muhsan, the next of kin (wali) may demand the hadd but not if the slandered deceased person was not a muhsan. Tabaqat, vol.II, p.110. al-Mughni, vol.IX, p.96. Note that the statement: "The slanderer of another person's deceased mother....by her free Muslim son" has only been mentioned as part of Ibn Qudamah's commentary. See al-Mughni, vol.IX, p.96. Also note that Ibn Qudamah's text here appears more accurate. Apparently al-Shawish's version is a misprint. Cf al-Shawish, Mukhtasar, p.125.

1056. This view is based on a report from Ibn Hanbal. Hence according to this view repentance cannot be accepted from this person. According to another report, which is also the view held by Abu Hanifah and al-Shafi'i, repentance is accepted regardless of whether the person is a Muslim or a non-Muslim. al-Mughni, vol.IX, p.97. Abu Ya'la, Sharh, p.127a (2747).

1057. This view is also held by Malik, Abu Hanifah and his two companions. According to another report from Ibn Hanbal, the slanderer is liable to a complete hadd for each of those slandered. Both these opinions are attributed to al-Shafi'i. Abu Ya'la, Sharh, p.127b (2747). al-Mughni, vol.IX, p.98.

1058. Abu Hanifah holds the view that unless it is a murder committed outside of the Haram, hadd may be executed on the person within the Haram. According to Malik and al-Shafi'i, hadd may be executed on the person within the Haram regardless of the crime committed. al-Mughni, vol.IX, pp.100-101.

1059. This view is also held by the rationalists. According to another report from Ibn Hanbal, for the third time the thief's left hand is amputated, and the right foot is amputated for the fourth time, and the thief is punished not by hadd and imprisoned for the fifth time. al-Mughni, vol.IX, p.125.

1060. Also, Malik and al-Shafi'i hold this view. According

to the rationalists, amputation of the thief's hand is no longer binding. Abu Ya'la, Sharh, p.130b (2747). al- Mughni, vol.IX, p.128.

1061. Malik and al-Shafi'i hold this view. Abu Hanifah holds the view that in this case, amputation of the thief's hand is no longer binding. Abu Ya'la, Sharh, p.130b (2747). al-Mughni, vol.IX, p.129.

1062. This view is also held by al-Shafi'i. According to Abu Hanifah, the thief's hand cannot be amputated and then the person made liable to the payment of the stolen object. If the stolen object is paid for before the thief's hand is amputated the amputating of the thief's hand is no longer binding. If the hand is amputated before the payment is made, then payment is no longer binding. Malik holds the view that payment for the stolen object is only due on a financially able person after the hand has been amputated and not on a thief who is financially unable. al-Mughni, vol.IX, p.130. Abu Ya'la, Sharh, p.131a (2747).

1063. Malik and al-Shafi'i hold this view. Abu Hanifah holds the view that the hand of a grave thief cannot be amputated. Abu Ya'la, Sharh, p.131a (2747). al-Mughni, vol.IX, p.131.

1064. Malik also holds this view. According to Abu Hanifah and al-Shafi'i, amputation is not binding on them unless each of them has stolen the minimum amount required for the amputation of the hand (nisab). al-Mughni, vol.IX, p.140.

1065. (D) This view is also held by Abu Hanifah and al-Shafi'i. According to Abu Bakr, which is also the view held by Malik, the thief's hand is amputated without any need for the owner of the stolen object to demand the amputating of the hand. Tabaqat, vol.II, p.111. al-Mughni, vol.IX, p.142.

1066. See Qur'an:Surah 5:33-34. See Schacht, Introduction, pp.180-181 for information on the penalties for highway robbery. For detailed information on highwaymen, their punishments and the duty of the Muslims. See Farrukh, Public & Private Laws, pp.88-111.

1067. This view is apparently upheld by the Hanbali school. al-Shafi'i also holds this view. However, according to another report from Ibn Hanbal, highwaymen are put to death and their hands and feet on alternate sides cut off as well, if homicide and plunder occur. According to the rationalists if homicide and plunder occur, the Imam has the option on whether to put them to death and have them crucified as well or put them to death and have their hands and feet on alternate sides cut off as well, or to execute all of that on them. According to Malik, the highway robber is put

to death if the Imam finds him stubborn and influential but not if found uninfluential. In the latter case the punishment is only to have the hands and feet on alternate sides cut off. <u>al-Mughni</u>, vol.IX, p.145.

1068. This view is also held by al-Shafi'i and the rationalists. According to Malik, the person involved may still be treated as a <u>muharib</u>, i.e. one who makes war upon Allah and His Messenger and strives after corruption in the land (see <u>Qur'an</u>:<u>Surah</u> 5:33). See <u>al-Mughni</u>, vol.IX, p.150.

1069. There are four different views on this case: 1) Only the <u>hadd</u> related to highway robbery lapses. This view is held by Malik. 2) The <u>hadd</u> related to highway robbery as well as other rights of Allah such as the committing of illegal intercourse or alcoholic drinking, etc. lapses. 3) All rights of Allah lapse, but they are responsible for the committing of other crimes such as related to murder, bodily injury and property. 4) All rights of Allah as well as those of human beings lapse. Ibn Rushd, <u>Bidayah</u>, vol.II, pp.457-458.

1070. (D) This view is also held by Abu Hanifah and Malik. According to Abu Bakr, which is also the view held by al-Shafi'i, the person is scourged with forty stripes. <u>Tabaqat</u>, vol.II, p.111. <u>al-Mughni</u>, vol.IX, p.161. Note here another point of divergence. According to al- Khiraqi, <u>hadd</u> is required for drinking only on one's own will. According to Abu Bakr, <u>hadd</u> is required for drinking even outside of one's own will. See <u>Tabaqat</u>, vol.II, pp.117-118.

1071. Also Abu Hanifah and al-Shafi'i hold this view. According to Malik, men may be scourged in the sitting position such as it is done in the case of women. <u>al-Mughni</u> vol.IX, p.167.

1072. These words have only been included in the commentary. See <u>al-Mughni</u>, vol.IX, p.168.

1073. This view, according to Ibn Qudamah, is based on a report that states that a free person is liable to eighty stripes for drinking. On the basis of the report that states that the free person is liable to forty stripes for drinking, a slave is only liable to twenty stripes for drinking. <u>al-Mughni</u>, vol.IX, p.169. See also note no.1070.

1074. Malik holds similar opinion. According to al-Shafi'i, if anything such as salt is thrown into it to ferment it and it then turns to vinegar, it is still forbidden. Abu Hanifah holds the view that it is considered pure. <u>al-Mughni</u>, vol.IX, p.172. Abu Ya'la, <u>Sharh</u>, p.137b (2747).

1075. <u>Ta'zir</u>: is a discretionary punishment awarded in cases where crimes that do not require <u>hadd</u> have been

committed. See Schacht, *Introduction*, pp.207-208. *al-Mughni*, vol.IX, p.176.

1076. This view is based on one of two reports from Ibn Hanbal. According to Abu Hanifah and al-Shafi'i, *Ta'zir* may not be carried out to the full extent of the least *hadd*, which according to Abu Hanifah is forty lashes, the *hadd* on a slave for drinking or slandering; and which according to al-Shafi'i is twenty lashes on a slave, and forty on a free person. Malik holds the view that *ta'zir* may be carried out over the full extent of *hadd* in accordance with the Imam's discretion. According to the other report from Ibn Hanbal, *ta'zir* may not be carried out over ten lashes. *al-Mughni*, vol.IX, pp.176-177.

1077. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah and his companions, the person is liable to its payment. See *al-Mughni*, vol.IX, p.181. Abu Ya'la, *Sharh*, p.138b (2747).

1078. Malik and al-Shafi'i also hold this view. According to Abu Hanifah, payment is not required in any case. *al- Mughni*, vol.IX, p.188.

1079. Abu Hanifah and al-Shafi'i also hold this view. Malik holds the view that no payment is required. *al-Mughni*, vol.IX, p.190.

1080. Abu Hanifah also holds this view. According to another report from Ibn Hanbal, which is also the view held by al-Shafi'i, payment is required. Abu Ya'la, *Sharh*, p.139b (2747). *al-Mughni*, vol.IX, p.190.

1081. Abu Hanifah and his two companions also hold this view. According to Malik and al-Shafi'i, each of them is liable to the payment of half of what each other's animal is worth. *al-Mughni*, vol.IX, p.191.

1082. Ibn Qudamah points out here that the disagreement between scholars in this case regarding payment is the same as mentioned in note no.1081. See *al-Mughni*, vol.IX, p.192.

1083. This is a collective duty (fard kifayah) considered fulfilled only when sufficient number of individuals have performed it, in distinction to the individual duty (fard 'ayn) which is binding on each individual himself or herself. See *E1*^{2} under *Fard*.

1084. Ibn Qudamah's text states <days>. See *al-Mughni*, vol.IX, p.203.

1085. *Jizyah*: the poll-tax levied on non-Muslims in Muslim State. See *E1*^{2} under *Djizya*.

1086. *Qur'an*:*Surah* 9:29.

1087. This apparently is the view upheld by the Hanbali school. It is also the view held by al-Shafi'i. According to a report from Ibn Hanbal, which is also the view held by Abu Hanifah, *Jizyah* is accepted from all disbelievers except Arab idol worshippers.

According to what is related from Malik, it is accepted from disbelievers except those of Quraysh. al-Mughni, vol.IX, p.212.

1088. Amir: here apparently stands for the commander of the Muslim army.

1089. See al-Mughni, vol.IX, p.215. See also Abu Ya'la, Sharh, p.143b(2747).

1090. See al-Mughni, vol.IX, p.227. See also al-Shawish, Mukhtasar, p.129. Abu Ya'la, Sharh, 146a (2747).

1091. (D) al-Shafi'i also holds the view that the killer is entitled to the victim's possessions regardless of whether or not the Imam has made that stipulation. According to Abu Bakr, which is also the view held by Abu Hanifah, the killer is not entitled to the victim's possessions unless the Imam has made that stipulation for him. Malik holds the view that the killer is not entitled to the victim's possessions unless the Imam stipulates that after the war is over. Note here Ibn Abi Ya'la's comment: "I saw it myself in al-Tanbih, Abu Bakr has assumed the same view as al-Khiraqi's", which probably indicates that either this was an old view Abu Bakr used to share with al-Khiraqi or a new view he later held as al-Khiraqi. See Tabaqat, vol.II, pp.112- 113. al-Mughni, vol.IX, pp.237-238. Abu Ya'la, Sharh, p.147a (2747).

1092. The phrase: <even in large quantity> (wa'in kathura) is rendered by a different statement: [even it be treasure](wa'in kanzan) in al-Shawish's version. Apparently it is a misprint in the latter version. See al-Shawish, Mukhtasar, p.130. See also al-Mughni, vol.IX, p.239.

1093. This view is preferable to Abu Bakr based on this report. See Abu Ya'la, Sharh, p.148a (2747). See also al-Mughni, vol.IX, p.239.

1094. This view is also held by al-Shafi'i. According to Abu Hanifah and Abu Yusuf, safe-conduct given by a slave is invalid, unless the slave has been permitted to fight. al-Mughni, vol.IX, p.241.

1095. This view is also held by al-Shafi'i. According to Abu Hanifah, if the enemy territory is initially entered as a horseman, the person is given the share of a horseman. If it is entered as a foot soldier, then the person is given the share of a foot soldier. al-Mughni, vol.IX, p.247.

1096. This view is held also by Malik, al-Shafi'i, Abu Yusuf and al-Shaybani. According to Abu Hanifah, only one share is given for the horse. al-Mughni, vol.IX, p.248.

1097. According to Abu Hanifah, Malik and al-Shafi'i, a person cannot receive shares of more than one horse. al-Mughni, vol.IX, p.250. Abu Ya'la, Sharh, p.150b (2747).

1098. According to al-Shafi'i and a similar opinion of Malik, if the person participates in the fight, he receives a share regardless of whether he dies before or after the ghanimah has been acquired. According to Abu Hanifah, if the person dies before the ghanimah is acquired to the Muslim land or before its division in the enemy land, nothing goes to him. Abu Ya'la, Sharh, p.150b (2747). al-Mughni, vol.IX, p.252.

1099. This view is based on one of two reports from Ibn Hanbal. According to the other report, which is also the view held by Abu Hanifah, Malik and al-Shafi'i, the non-Muslim does not receive a share. al-Mughni, vol.IX, p.256.

1100. Abu Hanifah and al-Shafi'i hold the view that in this situation, no share is allotted for the horse. al-Mughni, vol.IX, p.258.

1101. This view is also held by al-Shafi'i. According to Abu Hanifah, the person who joins as a reinforcement before the ghanimah is divided or acquired to Muslim land shares the ghanimah with them. al-Mughni, vol.IX, p.261.

1102. The rationalists also hold this view. According to Malik and al-Shafi'i, it is permissible to do so. al-Mughni, vol.IX, p.266.

1103. According to Abu Hanifah and al-Shafi'i, the child is considered as belonging to the religion of the father a non-Muslim if accompanied by one of the parents. According to Malik, the child if taken with the father, is considered as belonging to the religion of the father, but if taken with the mother then the child is a Muslim. al-Mughni, vol.IX, p.267. Abu Ya'la, Sharh, p.152b (2747).

1104. Ahl al-Harb: refers to the non-Muslims in the abode of war (enemy territory). See note no.1037.

1105. This has been mentioned only in the commentary. See al-Mughni, vol.IX, p.271.

1106. See section 18.2

1107. This view is also held by Abu Hanifah. According to al- Shafi'i, the person is considered the sole owner of the property; hence it may not be returned to other members of the troop. al-Mughni, vol.IX, p.276.

1108. The statement here only appears in Ibn Qudamah's commentary. See al-Mughni, vol.IX, p.282.

1109. (D) This indicates that liability in this case is on the seller. On the contrary, Abu Bakr holds the view that liability is on the buyer. Tabaqat, vol.II, p.113.

1110. Most scholars including al-Shafi'i hold this view. According to the school of Abu Hanifah, it is unlawful to burn them. al-Mughni, vol.IX, p.289.

1111. i.e. it is not permissible to kill their sheep or animals except at times of war. This view is also

held by al-Shafi'i. Abu Hanifah and Malik hold the view that they may be killed at other times as well. al-Mughni, vol.IX, p.289.

1112. According to Malik, al-Shafi'i and the rationalists, it may not be burnt. al-Mughni, vol.IX, p.305.

1113. Malik and al-Shafi'i hold the view that hadd may be carried out at any place. According to Abu Hanifah, hadd or retaliation cannot be carried out on the person in the enemy's territory or when the person returns to the Muslim land. al-Mughni, vol.IX, p.308.

1114. This view is also held by Abu Hanifah and al-Shafi'i. According to Malik, the person is liable to hadd punishment. al-Mughni, vol.IX, p.324.

1115. (D) This view is based on one of three reports from Ibn Hanbal. That is it is based on the amount demanded by 'Umar. According to a second report, the Jizyah has neither a fixed minimum nor a fixed maximum, it is exclusively left to the Imam to decide on the amount to be paid. According to a third report which is basically the view held by Abu Bakr, it has a fixed minimum but not a fixed maximum. Hence the Imam in this case may demand more than the amount demanded by 'Umar but not less than that. Tabaqat, vol.II, p.112. al-Mughni, vol.IX, pp.334-335.

1116. This is according to one opinion of al-Shafi'i. According to his other opinion a poor person must also pay the Jizyah. al-Mughni, vol.IX, p.340.

1117. The rationalists hold the view that these three persons are also exempted from paying Jizyah. According to one of two opinions of al-Shafi'i, all these three people must pay the Jizyah. al-Mughni, vol.IX, p.341.

1118. This view is also held by Malik and the rationalists. According to al-Shafi'i, if Islam is accepted after the year for which Jizyah is due the person is liable to its payment. Abu Ya'la, Sharh, p.162a (2747). al-Mughni, vol.IX, p.342.

1119. This view is also held by al-Shafi'i and the rationalists. It is based according to Ibn Qudamah, on an authentic report from Ibn Hanbal. According to another report which Khallal described as an old opinion given up by Ibn Hanbal, Jizyah is no longer binding on the person. al-Mughni, vol.IX, p.343.

1120. Banu Taghlib bin Wa'il: An Arabian tribe who on the first spread of Islam, occupied a province in Mesopotamia and professed the Christian faith. See Hughes, A Dictionary of Islam, p.624. al-Mughni, vol.IX, p.343.

1121. Also, according to the school of al-Shafi'i it is unlawful to eat their meat or to marry their women. According to the rationalists it is lawful to eat their meat or to marry their women. al-Mughni,

vol.IX, p.347.

1122. Ibn Qudamah's version of the Mukhtasar reads <travels into>. al-Mughni, vol.IX, p.347.

1123. According to al-Shafi'i, the dhimmi, in this case must only pay Jizyah except if the land of al-Hijaz is entered in which case permission is granted to the dhimmi based on the need of the Hijazis. al-Mughni, vol.IX, p.347.

1124. Abu Hanifah holds the view that nothing may be taken from the person unless Muslim merchants are also subjected to the payment of a certain charge in the enemy territory in which case the person is also made liable to a similar charge. According to al-Shafi'i, if the non-Muslim from the enemy territory enters the Muslim land with a business that Muslims have no need of, then permission is granted to the person only on the condition to pay something in return. al-Mughni, vol.IX, p.350.

1125. Abu Hanifah, Malik and al-Shafi'i all hold the view that it is lawful to eat what is caught by such a dog. al-Mughni, vol.IX, p.373.

1126. This view is based on one report from Ibn Hanbal. In another place, according to Ibn Qudamah, it was described by Ibn Hanbal as a bloodcurdling thing. al-Mughni, vol.IX, p.373.

1127. This is according to one of four reports from Ibn Hanbal, and this is the most well known opinion of Ibn Hanbal. 2) If the arrow vanishes from sight during the day, it is lawful, but not if it vanishes at night. 3) If it vanishes for a short period of time it is lawful but not for a long period of time. 4) It is reprehensible to eat what has fallen dead from a vanished arrow. The first two opinions here are also attributed to Malik. al-Shafi'i does not recommend the eating of what has vanished from one's sight. According to Abu Hanifah, it is lawful to eat it if the person has not given up looking for it but not if preoccupied with something else and then finds it later on. al-Mughni, vol.IX, p.378. Ibn Rushd, Bidayah, vol.I,p.460. Abu Ya'la, Sharh, p.166a (2747).

1128. This is the view by Abu Hanifah. al-Mughni, vol.IX, p.382.

1129. This, according to Ibn Qudamah, is the most well-known of the two reports. It is also the view held by al-Shafi'i. al-Mughni, vol.IX, pp.381-382.

1130. According to al-Shafi'i, it is absolutely unlawful. al-Mughni, vol.IX, p.382. Abu Ya'la, Sharh, p.167a (2747).

1131. (D) This view is also held by Abu Hanifah. According to Abu Bakr, which is also the view held by Malik and al-Shafi'i, it is lawful to eat. Tabaqat, vol.II,

pp.113-114.

1132. This view is also held by Abu Hanifah and al-Shafi'i. According to Malik, it is unlawful to eat it unless it is slaughtered. al-Mughni, vol.IX, p.389.

1133. This statement has been included only in the commentary. See al-Mughni, vol.IX, p.389.

1134. Here, three forms of slaughtering (dhakah) are distinguished as in the following: 1) Slaughtering by nahr, which consists in striking the animal with a lance, and so on between the original neck and the chest. 2) Slaughtering by dhabh, which consists in cutting the throat. 3) Slaughtering by 'aqr, which consists in killing the animal by any other means. See Laoust, Profession, p.137. Laoust, Precis, p.225. al-Mughni, vol.IX, p.398.

1135. al-Shafi'i also holds this view. According to Malik, the case is so if it is a hairy young one. Abu Hanifah holds the view that it is unlawful in this case to eat the young one unless it is slaughtered after it has emerged alive. al-Mughni, vol.IX, pp.400-401. Abu Ya'la, Sharh, p.169b (2747).

1136. See Qur'an:Surah 5:3.

1137. See Qur'an:Surah 7:157.

1138. See al-Bukhari, Kitab Dhaba'ih, bab no.28; Muslim, Kitab Nikah, hadith no.30; al-Tirmidhi, Kitab Nikah, bab no.29; Ibn Hanbal, vol.2, p.21.

1139. See al-Bukhari, Kitab Tibb, bab no.57; Muslim Kitab Sayd, hadith no.11; al-Tirmidhi, Kitab Sayd, bab no.9; Ibn Hanbal, vol.1, p.147. Note that this view is also held by al-Shafi'i and the rationalists. According to Malik, birds are not forbidden. al-Mughni, vol.IX, p.410.

1140. (D) This view is also held by Abu Hanifah. According to Abu Bakr, it is permissible to eat to the satisfaction of one's appetite. Both views are also attributed to al-Shafi'i. Tabaqat, vol.II, p.114. al-Mughni, vol.IX, p.415.

1141. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah, it is reprehensible to eat lizard. Abu Ya'la, Sharh, pp.173a-173b (2747). al-Mughni, vol.IX, p.422.

1142. Abu Hanifah and Malik hold the view that it is forbidden to eat hyena. Abu Ya'la, Sharh, p.173b (2747) al-Mughni, vol.IX, p.423.

1143. See al-Shawish, Mukhtasar, p.135. M.W.S.K., vol.XI, p.82. Note that Malik allows it, a view which is also according to the school of al-Shafi'i. Abu Ya'la, Sharh, p.173b (2747) al-Mughni, vol.IX, p.423.

1144. This view apparently is upheld by the Hanbali school. It is based on one of three reports from Ibn HanbAccording to a second report, if the liquid is in a large quantity it cannot be rendered impure.

According to a third report, a large quantity of any liquid substance can rid itself of impurity. al-Mughni, vol.IX, pp.426-427.

1145. Most reports from Ibn Hanbal point to the lawfulness of using the impure oil for lighting purposes. According to a report from Ibn Hanbal, it is unlawful to use it for lighting. al-Mughni, vol.IX, p.427.

1146. Udhiyah: is the sacrificing of a beast of cattle on the tenth of Dhu'l Hijjah after the ʿId prayer is over. cf Qur'an:Surah 108:2. See al-Subuni, Mukhtasar Ibn Kathir, vol.III, p.684. See also note no.271.

1147. Most scholars including al-Shafiʿi hold this view. Malik and Abu Hanifah hold the view that it is obligatory. al-Mughni, vol.IX, p.435.

1148. This act apparently is forbidden. According to Abu Yaʿla, which is also the view held by Malik and al-Shafiʿi, it is only reprehensible. Abu Yaʿla, Sharh, p.175a (2747) al-Mughni, vol.IX, p.436.

1149. Most scholars including al-Shafiʿi and the rationalists hold this view. Malik holds the view that seven people cannot sacrifice one animal. al-Mughni, vol.IX, p.437.

1150. This statement has been included only in Ibn Qudamah's commentary. See al-Mughni, vol.IX, p.440.

1151. (D) This view is also held by Abu Yusuf and al-Shaybani. According to Abu Bakr, if what is lost of the ear or the horn is one-third or more, the offering is not acceptable. According to Abu Hanifah and al-Shafiʿi, it is acceptable to offer as sacrifice an animal whose horn is lost. According to Malik, if the lost horn causes blood to flow then the offering is not acceptable; also if the whole ear is lost the offering is unacceptable. Tabaqat, vol.II, p.114. al-Mughni, vol.IX, p.441. Ibn Rushd, Bidayah, vol.I, p.432.

1152. Malik and al-Shafiʿi hold this view as well. The rationalists hold the view that such an offering is unacceptable. Abu Yaʿla, Sharh, p.176b (2747). al-Mughni, vol.IX, p.443.

1153. This view is also held by al-Shafiʿi. According to Abu Hanifah, the young one is rather offered alive to the needy persons. If it has already been slaughtered it is still offered to the needy persons together with an amount equivalent to the loss in value due to the slaughter. al-Mughni, vol.IX, p.445.

1154. Obviously what is required to commit the animal to sacrifice, according to this view, is the person's statement and not the intention for it. This view is also held by al-Shafiʿi. According to Abu Hanifah and Malik what is required is the purchasing of the animal with the intention of the ritual offering. al-Mughni, vol.IX, p.446. Abu Yaʿla, Sharh, p.176b

(2747).

1155. This is also according to the school of al-Shafi'i. According to Abu Hanifah, any part of it may be sold and the money offered as charity. Note also that al-Shafi'i holds the view that it is not acceptable to substitute the udhiyah already committed with another one of higher quality. Abu Ya'la, Sharh, p.178a (2747) al-Mughni, vol.IX, pp.450-451.

1156. Note that al-Khiraqi describes here the time of slaughtering the sacrifice as after the time normally taken by the Imam to complete the 'Id prayer including the khutbah, and not actually on the completion of the prayer itself and regardless of whether or not it pertains to city dwellers. This view is also according to the school of al-Shafi'i. Ibn Qudamah points out that Ibn Hanbal's statement apparently conveys that the validity of the blood sacrifice for the city dwellers is conditional upon the actual completion of the 'Id prayer including the khutbah. This latter view is held by Abu Hanifah and Malik. al-Mughni, vol.IX, p.452.

1157. Abu Hanifah and Malik also hold this view. According to the school of al-Shafi'i, it extends up to the last day of the days of tashriq. al-Mughni, vol.IX, p.453.

1158. This view is also held by al-Shafi'i. According to what is related from Ibn Hanbal which is also the view held by Malik, it can only be slaughtered by a Muslim. al-Mughni, vol.IX, p.455.

1159. See note no.1149.

1160. 'Aqiqah: is the blood sacrifice (dhabihah) slaughtered on the seventh day for the newly born child. Some scholars say the word originally signifies the hairs from the head of the newly born child and that the blood sacrifice is called 'aqiqah because on this day the hairs with which the child is born are cut off. Ibn Hanbal disagrees with this explanation and points out instead that the word stands for the blood sacrifice itself; and that the origin of the word signifies cutting (qat'), hence the slitting of the throat, gullet and the jugular veins of the animal. al-Mughni, vol.IX, pp.458-459. Ibn Qayyim, Tuhfah, pp.48-49. Ibn Hanbal, Masa'il, p.25. For detailed information on 'aqiqah and its laws, see Ibn Qayyim, Tuhfah, pp.3-311.

1161. (D) This is the view of most scholars. According to Abu Bakr, it is obligatory. Tabaqat, vol.II, pp.115-116.

1162. This view is also held by al-Shafi'i. According to some scholars the meat may be used as desired. Ibn Hanbal has similar opinion except that he points out that he does not mean by it that the whole meat

should be consumed without giving any portion of it as charity. Abu Ya'la mentions that the concept of cooking the 'aqiqah meat in unbroken limbs and bones is based on what is related from 'A'isha -may Allah be pleased with her- who said: "The 'aqiqah meat is cooked in unbroken limbs and unbroken bones". Abu Ya'la explains that by cooking it in this manner avoiding the breaking of the animal's limbs and bones, is an auguring of the well-being of the newly born child. See Abu Ya'la, Sharh, p.180b (2747). See also al-Mughni, vol.IX, p.463.

1163. Ibn Qudamah points out that al-Khiraqi's statement here means that either no competition is permitted subject to the payment of consideration except in these three instances, which is the view held by Malik, or no reward is offered in a competition except in these three situations. Abu Hanifah allows racing on foot with the payment of consideration, and some Shafi'ites allow racing with birds with the payment of consideration. See al-Mughni, vol.IX, p.467. See also Abu Ya'la, Sharh, p.180b (2747).

1164. Muhallil: here signifies a third party who participates in the competition without putting anything at stake. The rationalists also allow the participation of the Muhallil. This is also according to the school of al- Shafi'i. Malik dislikes it. al-Mughni, vol.IX, p.472.

1165. See al-Nasa'i under Kitab Nikah, bab no.60; Abu Dawud under Kitab Zakah bab no.9; al-Tirmidhi, under Kitab Nikah, bab no.30; Ibn Hanbal, vol.2, p.180, p.215. See also al-Shawish, Mukhtasar, p.137.

1166. This is according to a report from Ibn Hanbal. According to a second report which is also one view of al-Shafi'i, even if it is related to divorce or manumission of a slave, nothing is binding. According to a third report which is the view held by Malik, the rationalists and which is also a second view of al-Shafi'i, kaffarah is binding for breaking an oath related to anything. al-Mughni, vol.IX, pp.494-495.

1167. This view is based on a report from Ibn Hanbal. It is a view held by most scholars including Malik and the rationalists. This kind of oath is known as al-Yamin al-Ghamus (ominous oath) because it sinks the person into deep sin. According to another report from Ibn Hanbal, which is also the view held by al-Shafi'i, kaffarah is required. al-Mughni, vol.IX, p.496. Abu Ya'la, Sharh, p.184a (2747).

1168. This view is held by most scholars including Abu Hanifah and Malik. According to one of two opinions of al-Shafi'i, kaffarah is required. According to a report from Ibn Hanbal this is not considered an unintentional oath, hence kaffarah is required. al-

Mughni, vol.IX, p.497.

1169. To swear by a verse in the Qur'an is considered an oath which if broken requires kaffarah. This is the view of most scholars including Malik and al-Shafi'i. According to Abu Hanifah, it is not considered an oath and hence does not require kaffarah if broken. al-Mughni, vol.IX, p.504.

1170. To swear by the covenant is considered, according to Malik, an oath which if broken requires kaffarah. al-Shafi'i does not consider it an oath unless what is sworn by is the covenant of Allah. According to Abu Hanifah, it is not at all considered an oath. al-Mughni, vol.IX, p.506.

1171. This view is based on a report from Ibn Hanbal. It is also the view held by the rationalists. According to another report from Ibn Hanbal, no kaffarah is binding. This latter view is held by Malik and al-Shafi'i. al- Mughni, vol.IX, p.507.

1172. Malik and al-Shafi'i hold the view that this is not an oath, hence nothing is binding. al-Mughni, vol.IX, p.508.

1173. This view is also held by Abu Hanifah. According to al- Shafi'i, the oath is not binding here unless one's intention is to swear by the attribute of Allah. al- Mughni, vol.IX, p.512.

1174. This view is based on one of two reports from Ibn Hanbal. According to the other report, only one kaffarah is binding. al-Mughni, vol.IX, p.515.

1175. This second report is according to the view held by Abu Hanifah. Note that the ram to be slaughtered is to be used in feeding the needy. This view apparently is based on the sacrificial act of Abraham (cf Qur'an:Surah 37:102-107). According to al-Shafi'i nothing is binding in this case. al-Mughni, vol.IX, pp.516-517.

1176. Muzahir: is the man who pronounces on his wife the formula: "You are for me (as untouchable) as the back of my mother". It is an old form of repudiation which Islam does not recognize as such. Schacht, Introduction, p.165. See note no.910. See also section 34.1.

1177. Malik also holds this view. The rationalists hold the view that kaffarah is not acceptable until the oath has been broken. According to al-Shafi'i, it is not acceptable if it relates to fasting alone until the oath has been broken. Abu Ya'la, Sharh, p.189a (2747). al-Mughni, vol.IX, p.520.

1178. This latter report from Ibn Hanbal is according to the view held by Malik. al-Shafi'i and the rationalists hold the view that it is permissible to pronounce the statement of exception in relation to divorce or manumission of a slave. al-Mughni, vol.IX,

p.525. Abu Ya'la, Sharh, p.190a (2747).

1179. This view, in both cases, is based on one of three reports from Ibn Hanbal. It is also the view held by most scholars including al-Shafi'i. According to a second report, she is not considered divorced if he ever marries her; but if he ever owns a slave he is considered manumitted. According to a third report, which is also the view held by the rationalists, she is considered divorced if he ever marries her; and also if he ever owns a slave he is considered manumitted. al-Mughni, vol.IX, pp.525-526.

1180. Malik has similar opinion. According to al-Shafi'i, the person has not broken the oath unless his intention is that another person will not be appointed to act on his behalf. According to the rationalists, a person who swears not to sell and then appoints someone to sell for him has not broken the oath, but a person who swears not to hit another person or marry and then appoints someone to act on his behalf has broken the oath. al-Mughni, vol.IX, p.530. Abu Ya'la, Sharh, p.191a (2747).

1181. This view is also held by Malik and the rationalists, and it is according to the most well-known opinion of al-Shafi'i. According to a report from Ibn Hanbal such a person has not broken the oath. al-Mughni, vol.IX, pp.531-532.

1182. Such as the response given by Ibn Hanbal to a question concerning a man who had two wives each of whose name was Fatimah and one of them later died, and he swore that Fatimah was divorced, meaning the deceased. Ibn Hanbal said, "If the person sworn for is the wrongdoer the repudiator's intention is accepted, but if the repudiator is the wrongdoer then the intention of the person sworn for is accepted". al-Mughni, vol.IX, p.532.

1183. See Muslim, Kitab Ayman, hadith no.20; Abu Dawud, Kitab Ayman, bab no.7; Ibn Majah, Kitab Kaffarat, bab no.14; Ibn Hanbal, vol.2, p.228.

1184. The stipulation made that the minor must be capable of eating food, apparently is the view held by Malik. This view is based on one of two reports from Ibn Hanbal. According to the other report which is also according to the school of al-Shafi'i and the view held by the rationalists, it is permissible to give the food to a minor who is incapable of eating food, and his guardian (wali) receives it on his behalf. al-Mughni, vol.IX, p.539.

1185. According to another report from Ibn Hanbal which is also the view held by Malik and al-Shafi'i, bread is not acceptable. al-Mughni, vol.IX, p.540.

1186. This view is not only held by Ibn Hanbal but also by Malik and al-Shafi. According to the rationalists, it

is acceptable. *al-Mughni*, vol.IX, p.542. Abu Ya'la, *Sharh*, p.193a (2747). See also al-Shawish, *Mukhtasar*, p.49.

1187. (D) This view is also held by Malik. Hence, according to this view the emancipated slave must not be a child under the legal age for the performance of prayer. According to Abu Bakr,which is also the view held by al-Shafi'i, a child of any age may be emancipated in fulfillment of the *kaffarah*. *Tabaqat*, vol.II, pp.106-107. *al-Mughni*, vol.IX, p.547.

1188. This view is also held by Malik and al-Shafi'i. According to the rationalists, it is acceptable. Abu Ya'la, *Sharh*, p.195a (2747). *al-Mughni*, vol.IX, p.550.

1189. Malik, al-Shafi'i and the rationalists all hold this view. According to another report from Ibn Hanbal, *umm al-Walad* is acceptable for the fulfillment of *kaffarah*. *al-Mughni*, vol.IX, p.552.

1190. This view is based on one of three reports from Ibn Hanbal. It is also the view held by the rationalists. 2) *Mukatab* is absolutely acceptable. 3) *Mukatab* is not at all acceptable. This is the view held by Malik and al-Shafi'i. *al-Mughni*, vol.IX, p.552.

1191. al-Shafi'i also holds this opinion. On the contrary, the rationalists hold the view that *Mudabbar* slave is not acceptable. *al-Mughni*, vol.IX, p.553.

1192. i.e. the feeding of the needy persons or clothing them or the manumitting of the slave. See *Qur'an*:*Surah* 5:89.

1193. This stipulation apparently is acceptable to the Hanbali school. It is also required by the rationalists. According to another report from Ibn Hanbal which is also the view held by Malik and according to one of two opinions of al-Shafi'i, the fasting for three days may be performed inconsecutively. *al-Mughni*, vol.IX, pp.554-555. Abu Ya'la, *Sharh*, p.195a (2747).

1194. This view is also held by the rationalists. According to al-Shafi'i, it is unacceptable. Abu Ya'la, *Sharh*, p.196a (2747). *al-Mughni*, vol.IX, p.560.

1195. (D) According to Abu Bakr, which is also the view held by Ibn Hamid and some al-Shafi'i scholars, it is not acceptable. Abu Ya'la, *Sharh*, p.196b (2747). *Tabaqat*, vol.II, p.107. *al-Mughni*, vol.IX, p.561.

1196. Malik and al-Shafi'i also hold this view. According to the rationalists in such a case the person must give up the fasting for the manumitting of a slave or the feeding of the needy. *al-Mughni*, vol.IX, p.563. Abu Ya'la, *Sharh*, p.196b (2747).

1197. Malik also holds this view. According to Abu Hanifah and al-Shafi'i, intentions and their causes cannot be considered if different from the expression of the

oath. _al-Mughni_, vol.IX, pp.564-565.

1198. According to a report from Ibn Hanbal which is according to the school of Abu Hanifah and the view held by al-Shafi'i, the person has not broken the oath until the body has completely entered the house. _al-Mughni_, vol.IX, p.575.

1199. This view is also held by Abu Hanifah and Malik. al-Shafi'i holds the view that the person in this case has not broken the oath. _al-Mughni_, vol.IX, p.580.

1200. This view is also held by the rationalists, and it is based on the understanding that the Arabic word "_hin_" for sometime is six months. According to Malik, it stands for "one year". According to al-Shafi'i it has no time limit, it can be used for a short or a long period of time. _al-Mughni_, vol.IX, pp.586-587.

1201. Abu Hanifah also holds this view. According to al-Shafi'i if it is settled before the pre-established time it is considered as a breach of oath. _al-Mughni_, vol.IX, p.588.

1202. This view is also held by al-Shafi'i. According to Abu Hanifah and Malik, it is a breach of oath if any of them is eaten. _al-Mughni_, vol.IX, p.605.

1203. Malik and Abu Yusuf also hold this view. Abu Hanifah and al-Shafi'i hold the view that it is not a breach of oath if fish is eaten instead. Abu Ya'la, _Sharh_, p.201b (2747) _al-Mughni_, vol.IX, p.608.

1204. This view is based on a report from Ibn Hanbal. According to another indication and also the schools of al-Shafi'i and the rationalists, this is not a breach of oath. _al-Mughni_, vol.IX, pp.611-612. Abu Ya'la, _Sharh_, p.201b (2747).

1205. This view is also held by Malik and the rationalists. According to Ibn Hamid the oath is considered fulfilled. This latter view is also held by al-Shafi'i who stipulates that all the scourges must touch the person for the oath to be considered fulfilled. _al-Mughni_, vol.IX, p.614.

1206. Most Hanbali scholars hold this view. It is also according to the schools of Malik and al-Shafi'i. According to Abu Hanifah and a new opinion of al-Shafi'i it is not considered as a breach of oath. _al-Mughni_, vol.IX, p.615.

1207. Abu Hanifah also holds the view that _kaffarah_ is required in this case. Ibn Qudamah points out that there is another report from Ibn Hanbal that _kaffarah_ is not required in a vow of disobedience. This latter view is according to the schools of Malik and al-Shafi'i. _al-Mughni_, vol.X, pp.5-6.

1208. This statement appears only in Ibn Qudamah's commentary. See _al-Mughni_, vol.X, pp.3-4.

1209. He was Abu Lubabah bin 'Abd al-Mundhir al-Ansari. Some say: his name was Bashir bin 'Abd al-Mundhir.

Others say: Rifa'ah bin 'Abd al-Mundhir. He died during the caliphate of 'Ali. Abu Lubabah was one of those persons who stayed behind during the battle of Tabuk. He then tied himself by a pole of the Mosque and said: "I shall not untie myself or taste a food or drink until Allah has accepted my repentance or I die in the process". He remained in this condition for seven days and fell unconscious and Allah accepted his repentance (cf Qur'an:Surah 9:102). When he was informed Allah has accepted his repentance, he said: "By Allah, I shall not untie myself until the Messenger of Allah does so for me". He came to the Messenger of Allah and was untied, and then Abu Lubabah said: "O Messenger of Allah, as a penitence I shall quit my folk's home wherein I committed this sin and give up all my wealth as a charity to Allah and His Messenger", and the Messenger of Allah said, "O Abu Lubabah, one third will suffice". See Ibn Hajar (b.773 A.H./1374 C.E. d.852/1449) al-Isabah & al-Isti'ab vol.XII, pp.107-110. See also al-Sabuni, Mukhtasar Ibn Kathir, vol.II, pp.166-167.

1210. Ibn Hajar cites this hadith and traces it back to Ibn Hanbal and Abu Dawud. See al-Shawish, Mukhtasar, p.142. See also al-Bahuti, al-Rawd, vol.III, pp.378-379.

1211. This view regarding prayer is based on one of two reports. It is also the view held by Abu Hanifah. According to a second report, one rak'ah may be carried out for that. Both reports are also attributed to al- Shafi'i. al-Mughni, vol.X, p.12.

1212. According to another report from Ibn Hanbal, which is also the view held by Malik and one of two opinions of al-Shafi'i, the person may ride an animal and need only make a blood sacrifice as penalty. According to Abu Hanifah, a gift of blood sacrifice (hady) is required regardless of whether or not the person is able to walk on foot. al-Mughni, vol.X, p.13.

1213. See section 50.1. See also note no.1187.

1214. (D) This view is also held by Abu Yusuf. According to a second report which is the view held by Abu Bakr and Abu Ya'la, the fasting of Ramadan must be observed in addition to making up another month for the vow. Tabaqat, vol.II, pp.114-115. al-Mughni, vol.X, p.20.

1215. See section 6.1. See also M.W.S.K., vol.III, pp.97-98, p.111.

1216. This view is based on one of two reports. According to a second report which is also the view held by al-Shafi'i, it is unnecessary to start the fast over again unless a stipulation was made to fast the month successively. al-Mughni, vol.X, p.27.

1217. According to Malik, nobody walks for another person.

Likewise the performance of prayer or fasting and other bodily acts of worship. According to al-Shafi'i, pilgrimage (hajj) may be performed on behalf of another person but not the prayer at all; and not the fasting, according to one of two opinions of al-Shafi'i. al- Mughni, vol.X, pp.28-29. Abu Ya'la, Sharh, p.207b (2747).

1218. This view is also held by Malik and al-Shaybani and it is according to one of two opinions of al-Shafi'i. According to another report from Ibn Hanbal which is also the view held by Abu Yusuf and a second opinion of al-Shafi'i, it is permissible to do so. According to Abu Hanifah, it is permissible to apply his knowledge of things only after his appointment as qadi, except in matters that require hadd punishment. According to al-Shafi'i, it is permissible to apply his knowledge of things before or after his appointment as qadi, except in those things that require hadd punishment. Abu Ya'la, Sharh, p.209b (2747). al-Mughni, vol.X, p.48. For detailed information on the Judicial system, the qualifications and functions of the qadi (judge), see Falaturi, Islam und Abdendland -Schneider, Das Bild Des Richters, pp.1-266.

1219. Ijma': is the third of the bases of Islamic Law. Technically, it is the consensus of the legal scholars at any given time. See Makdisi, Law Library Journal, 1986, vol.78, no.1, pp.103-106. For more detailed information on ijma', see EI^2 under idjma'.

1220. This view is also held by Abu Hanifah and al-Shafi'i. According to Malik, the most reliable is accepted of the two groups of persons who declared him reliable and unreliable. al-Mughni, vol.X, p.60.

1221. (D) This view is also held by al-Shafi'i. According to another report from Ibn Hanbal which is also the view held by Abu Bakr and Abu Hanifah, it may be accepted from one person. al-Mughni, vol.X, p.88.

1222. According to the rationalists and apparently according to the school of al-Shafi'i, his statement cannot be accepted until two other witnesses testify to that statement. al-Mughni, vol.X, p.89.

1223. Malik also holds this view. According to another report from Ibn Hanbal which is also the view held by Abu Hanifah and his companions, judgment against the person cannot be passed in this situation. al-Mughni, vol.X, p.95. Abu Ya'la, Sharh, p.213a (2747).

1224. Abu Yusuf and al-Shaybani also hold this view. According to Abu Hanifah, if it is a landed property connected with inheritance, it cannot be divided until the death of its owner is ascertained and his heirs are known. al-Shafi'i apparently holds the view that the property cannot be divided regardless of

whether or not it related to a landed property until the partners' entitlement to it is ascertained. al-Mughni, vol.X, p.99.

1225. It should be noted that after this point follows one additional chapter namely: "Care of the child" (al-Hadanah) which is included in Ibn Qudamah's version of the Mukhtasar, pp.117-127. It is originally extracted from al-Sharh al-Kabir and added here for its informativeness. See a remark on it in Ibn Qudamah's al-Mughni, vol.X p.488. Cf M.W.S.K., vol.XI, pp.518- 526.

1226. al-Shafi'i, Abu Hanifah and his companions hold the view that the testimony of a child who has not attained the legal age cannot be accepted. This view apparently is based on a report from Ibn Hanbal. According to another report from him, which is also the view held by Malik, children's testimony may be accepted in relation to injury. According to still another report from him, the testimony of a ten year old child is accepted. al-Mughni, vol.X, p.144.

1227. Ibrahim al-Nakha'i: He is Abu Imran Ibrahim bin Yazid bin Qays al-Nakha'i, a faqih and traditionist of Kufa 50-96 A.H./670-715 C.E. See EI^2 under Ibrahim b. al-Ashtar.
Ishaq: al-Khiraqi is probably referring to Ishaq bin Ibrahim bin Mukhallad al-Khanzali al-Tamimi also called Ishaq bin Rahawayh, another faqih and traditionist d. 238 A.H. See Qal'ahji, Mawsu'ah, vol.II, p.1013.

1228. Abu Hanifah, Malik and al-Shafi'i all hold the view that it cannot be accepted from them. al-Mughni, vol.X, p.165.

1229. This view is also held by Malik. According to Abu Hanifah and al-Shafi'i, it cannot be accepted from him. Abu Ya'la, Sharh, p.221b (2747). al-Mughni, vol.X, p.170.

1230. Note that according to another report from Ibn Hanbal, the child's testimony on behalf of his father is accepted but not the father's testimony on behalf of his child. According to still another report from Ibn Hanbal, the testimony of each of them is accepted on behalf of the other in cases where they are not subject to accusation, such as in marriage, divorce, and so on. al-Mughni, vol.X, pp.172-173.

1231. Abu Hanifah, al-Shafi'i and Malik all hold the view that a slave's testimony is not acceptable. Abu Ya'la, Sharh, p.223b (2747). al-Mughni, vol.X, p.176.

1232. This is the view of most scholars including al-Shafi'i, Abu Hanifah and his companions. According to Malik, his testimony is not accepted in respect to unlawful intercourse only. Abu Ya'la, Sharh, p.223b (2747). al- Mughni, vol.X, p.177.

1233. This view is also held by Malik and al-Shafi'i. According to the rationalists, testimony cannot be accepted from him if he is flogged even after repenting. al-Mughni, vol.X, p.178.

1234. This view is also held by Abu Hanifah and his companions. According to Malik and one opinion of al-Shafi'i, it is permissible in the cases of hadd. al-Mughni, vol.X, p.187.

1235. This view is upheld by the Hanbali school, and it is based on one of four reports from Ibn Hanbal. 2) He cannot testify unless the acknowledger asks him to do so for him. 3) He cannot testify for him if he is heard acknowledging a debt. 4) If after hearing anything he is called upon to testify he has the option to accept or to refuse to testify. al-Mughni, p.193.

1236. (D) This view is also held by al-Shafi'i. According to another report from Ibn Hanbal, which is the view held by Abu Bakr, the testimony of such a person cannot be accepted. Tabaqat, vol.II, p.115. al-Mughni, vol.X, p.195.

1237. Malik holds this opinion. It is also according to one of two opinions of al-Shafi'i. According to the rationalists and the other opinion of al-Shafi'i, neither the witnesses are liable to hadd nor the person that has committed the unlawful intercourse. al-Mughni, vol.X, p.214.

1238. Ibn Qudamah points out that they are only subjected to retaliation if they say: "We deliberately told a lie in order for him to be put to death, or for his hand to be amputated", which is also the view held by al-Shafi'i, but not if they say: "We deliberately told a lie and did not know the person might be put to death", in which case if they are people who could possibly be ignorant of that, then they are made liable to a heavy payment of blood money. According to the rationalists, they cannot be put to death. al-Mughni, vol.X, pp.220-221. Abu Ya'la, Sharh, p.229a (2747).

1239. This view is based on a report from Ibn Hanbal. According to another report from him, the blood money is borne by the 'aqilah of the judge. See al-Mughni, vol.X, p.228. Note that a witness is required to meet higher demands including the quality of good character ('adl) i.e. the witness must not have committed grave sin and must not persevere in small ones. Schacht, Introduction, p.125. The fasiq (sinner) is, hence unreliable and cannot testify. Cf Qur'an:Surah 49:6.

1240. This view is based on a report from Ibn Hanbal. According to another report from him, which is also the view held by al-Shafi'i, his freedom may be

confirmed only by two male witnesses of good character. al-Mughni, vol.X, p.231. Abu Ya'la, Sharh, pp.230a-230b (2747)

1241. Ibn Qudamah's version of the Mukhtasar here reads: <by the father>. See al-Mughni, vol.X, p.238. al-Shawish's version appears more accurate here because of the fact that the deceased here is described as being survived by a son and not by the father. See al-Shawish, Mukhtasar, p.147.

1242. According to al-Shafi'i, acknowledgment by signalling is accepted if the person is unable to speak. Abu Ya'la, Sharh, p.231b (2747). al-Mughni, vol.X, p.239.

1243. This view is also held by al-Shaybani. According to Abu Yusuf which apparently is according to the school of al-Shafi'i, it may be accepted. al-Mughni, vol.X, p.239.

1244. Abu Hanifah also holds this view. According to al-Shafi'i and a similar opinion of Abu Yusuf and al-Shaybani, oath may be taken on anything related to the rights of human being such as for example marriage. al-Mughni, vol.X, p.242.

1245. See al-Bukhari under Kitab Rahn, bab no.6; al-Tirmidhi under Kitab Ahkam, bab no.12; Ibn Majah under Kitab Ahkam, bab no.7. See also al-Shawish, Mukhtasar, p.148. Note that the view here is the most well-known view of the Hanbali school. It is based on one of three reports from Ibn Hanbal. 2) The defendant's evidence is legally effective if it proves his ownership. This is the view of Abu Hanifah. 3) The defendant's evidence is legally effective in any way. This is the view held by al-Shafi'i. al-Mughni, vol.X, p.245.

1246. Abu Hanifah holds the view that in the case of what is suitable for both of them while legally in their possession, the man's word is taken corroborated by his oath. According to Malik, what is suitable for each of them goes to each person but what is suitable for both of them goes to the man. According to al-Shafi'i, everything in the house is divided equally between both of them. al-Mughni, vol.X, p.283.

1247. See Abu Dawud under Kitab Buyu', bab no.79; al-Tirmidhi under Kitab Buyu', bab no.38; al-Darimi under Kitab Buyu', bab no.57; Ibn Hanbal, vol.3, p.414. Note that al-Khiraqi's view here is according to one of two reports from Malik. According to a well-known opinion of the Maliki school, unless the latter person is liable to some debt the former may take the equivalent value of his right from the latter. According to al-Shafi'i, if the original right cannot be recovered, it is permissible to take its equivalent value from other property. According to Abu Hanifah, it is permissible to take the

equivalent value of his right from gold or silver or similar property. al-Mughni, vol.X, p.287. Abu Ya'la, Sharh, pp.238b-239a (2747).

1248. This is due to the liability on him for the payment of third partner's portion which is one-third of what the slave is worth, Hence one third of the manumitted slave's wala' here added to another one-third due to him by virtue of the manumission of his portion sums up to two-thirds of the slave's wala'. Cf Ibn Qudamah, al-Mughni, vol.X, p.303.

1249. This view is also held by Malik and al-Shafi'i. According to Abu Hanifah, only one third of each slave is considered manumitted, and each must work for the freedom of the remaining part. al-Mughni, vol.X, p.318. Abu Ya'la, Sharh, p.246a (2747).

1250. Ibn Qudamah points out here that these two different reports are related to if one third of the manumitter's estate is enough to cover the other partner's portion of the slave. al-Mughni, vol.X, p.327.

1251. Hence, according to this view, the umm al-Walad is not considered manumitted just after becoming Muslim. She is only at this time unlawful to her christian master unless he also accepts Islam. This view is also held by al-Shafi'i. According to Malik she is immediately considered manumitted by virtue of becoming a Muslim. According to another report from Ibn Hanbal which is also the view held by Abu Hanifah, on becoming a Muslim she may work to pay for her freedom, after which time she may be considered manumitted. al-Mughni, vol.X, p.480.

1252. Tadbir: is the manumission of a slave with effect at the death of the owner. Hence the slave manumitted in this form is known as Mudabbar. Schacht, Introduction, p.129.

1253. According to some reports from Ibn Hanbal, the male mudabbar slave may be sold absolutely whether or not it is for the purpose of settling a debt and whether or not the owner has a need for some money. al-Shafi'i holds similar opinion. Malik and the rationalists disapprove of this sale. In regard to a female mudabbar slave, Ibn Hanbal, based on one report, does not recommend that she be sold except for the purpose of settling a debt. Ibn Qudamah points out that the distinction made between the male mudabbar slave and the female mudabbar slave was only known from Ibn Hanbal. See al-Mughni, vol.X, pp.348-349.

1254. The first report here is according to the new opinion of al-Shafi'i, i.e. the manumission by tadbir cannot be revoked. Ibn Qudamah prefers this view to the second view which considers manumission by tadbir in

this case as void. This latter view is an old opinion of al-Shafi'i. al-Mughni, vol.X, p.350.

1255. Hence the manumission by tadbir of a child who has reached the age of discretion (mumayyiz) is acceptable. This view is according to one of two reports related from Malik, and is according to the most authentic of two opinions of al-Shafi'i. Abu Hanifah holds the view that manumitting by a child by tadbir is not acceptable. This latter view is according to the second report from Malik and the second opinion of al-Shafi'i. al-Mughni, vol.X, p.359.

1256. Qur'an:Surah 24:33. al-Shafi'i also holds the view that it is obligatory for the slave owner to bestow some part of the contract upon the mukatab slave. Abu Hanifah and Malik hold the view that it is not obligatory to do so. Abu Ya'la, Sharh, p.254a (2747) al-Mughni, vol.X, p.377.

1257. According to still another report, the slave master is not bound to accept payment for the entire contract except by installment at its due time. al-Mughni, vol.X, p.380.

1258. Hence according to the first report here, the mukatab is considered to have died in a state of slavery. This view is held by al-Shafi'i. According to the second report which is also the view held by Malik and the rationalists, he is considered to have died a free man. See al-Mughni, vol.X, p.383.

1259. (D) Abu Bakr holds the view that it is permissible. Tabaqat, vol.II, pp.116-117. Note that this transaction is considered unacceptable because it is based on usury (riba). See M.W.S.K., vol.XII, p.386.

1260. This view is according to an old opinion of al-Shafi'i. According to another report from Ibn Hanbal, which is also the view held by Malik and the rationalists and also according to a new opinion of al-Shafi'i it is not permissible to sell the Mukatab. al-Mughni, vol.X, pp.433-434.

1261. This view is based on one of three reports from Ibn Hanbal. 2) Both must take an oath, and hence the contract is voided. This view is held by Abu Yusuf and al-Shaybani. 3) The Mukatab's word is taken. This view is held by Abu Hanifah. al-Mughni, vol.X, p.446.

1262. Malik and al-Shafi'i hold the view that it is invalid to reserve ownership of the fetus. al-Mughni, vol.X, p.448.

1263. This view is also held by Abu Hanifah. According to al- Shafi'i, it is not permissible to do so. al-Mughni, vol.X, p.449.

1264. (D) This view is also held by Abu Hanifah. According to Abu Bakr, which is also the view held by Abu Ya'la, it may be spent on other Mukatabs. Tabaqat,

vol.II, p.117. Abu Ya'la, _Sharh_, p.262b (2747). _al-Mughni_, vol.X, p.452.

1265. Hence, according to this view, which is also the view held by al-Shafi'i, the female slave is not considered _umm al-Walad_ if owned by her husband while she is in a state of pregnancy or after giving birth. According to a report from Ibn Hanbal which is also the view held by Abu Hanifah she is considered _umm al-Walad_ in both cases. According to Ibn Qudamah's finding, Ibn Hanbal is undecided in the case of her being owned after giving birth. According to the Maliki school, she is considered _umm al-Walad_ if she is owned in the state of pregnancy. _al-Mughni_, vol.X, pp.471-472. Abu Ya'la, _Sharh_, p.263b (2747).

1266. See note no.1251.

1267. According to another report from Ibn Hanbal, which is also one of two opinions of al-Shafi'i, if the crime is repeated after she has been redeemed from the previous crime by what she is worth, it is no longer binding on the owner to redeem her. _al-Mughni_, vol.X, p.483, Abu Ya'la, _Sharh_, p.266a (2747).

1268. Abu Hanifah also holds this view. It is according to one of three views of al-Shafi'i. According to a second and an old opinion of al-Shafi'i, she cannot be married except by her consent. According to al-Shafi'i's third opinion, her master cannot marry her to another man even if she is pleased with it. _al-Mughni_, vol.X, p.484.

1269. This is the view of most scholars. According to a report from Ibn Hanbal, her slanderer is liable to _hadd_ punishment. _al-Mughni_, vol.X p.484.

1270. According to another report from Ibn Hanbal, she is treated in respect to _'awrah_ the same as a free woman. Hence, her prayer is not acceptable if she prays bare- headed. _al-Mughni_, vol.X, p.485. Abu Ya'la, _Sharh_, p.266b (2747).

1271. This view is also held by Abu Yusuf. According to al-Shafi'i, she must pay the blood money. Abu Ya'la, _Sharh_, p.266b (2747). _al-Mughni_, vol.X, p.485.

1272. Note, this phrase stands for the fifth lunar month, hence it is also called: _Jumada Khamsah_, the fifth month from the commencement of the year. See _Lane_.

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